IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

Deanna Brown-Thomas, *an individual and in her capacity as intestate heir and pending Personal Representative of the estate of her sister, the deceased Venisha Brown*; Yamma Brown, *an individual*; Michael D. Brown, *an individual*; Nicole C. Brown, *an individual*; Jeanette Mitchell Bellinger, *an individual*; Sarah LaTonya Fegan, *an individual*; Ciara Pettit, *an individual*; and Cherquarius Williams, *an individual*, Plaintiffs, v. Tommie Rae Hynie, *an individual also known as Tommie Rae Brown*; James J. Brown, II, *an individual*; Russell L. Bauknight, *as the Personal Representative of the Estate of James Brown and Trustee of the James Brown I Feel Good Trust*; David C. Sojourner, Jr., *as the Limited Special Administrator of the Estate of James Brown and Limited Special Trustee of the James Brown I Feel Good Trust*; and Does, *1 through 10, inclusive*, Defendants.	Civil Action No.: 1:18-cv-02191-JMC **ORDER AND OPINION**

This matter is before the court on Defendant Tommie Rae Hynie ("Defendant Hynie"),[1] Defendant James J. Brown, II ("Defendant Brown"), Defendant Russell L. Bauknight ("Defendant

[1] In their pleadings, Plaintiffs Deanna Brown-Thomas, Yamma Brown, Michael D. Brown, Nicole C. Brown, Jeanette Mitchell Bellinger, Sarah LaTonya Fegan, Ciara Pettit, and Cherquarius Williams's (collectively, "Plaintiffs") assert that Defendant Tommie Rae Hynie's ("Defendant Hynie") last name is "Hynie." (ECF Nos. 1, 89, 96.) Defendant Hynie, on the other hand, uses the last name "Brown." (ECF Nos. 81, 99.) Upon careful consideration of the parties' strong opinions on this matter, and given the number of parties with the last name "Brown," the court will utilize "Hynie" within its orders because the action has been filed in the name of Tommie Rae Hynie. (*See* ECF No. 1.)

Bauknight"), and Defendant David C. Sojourner, Jr.'s ("Defendant Sojourner") (collectively, "Defendants") Motions to Dismiss. (ECF Nos. 80, 81, 85, 101.) Defendants' Motions, primarily seeking dismissal under Federal Rule of Civil Procedure 12(b)(1), require the court to first address novel jurisdictional issues implicating the Copyright Act of 1976's ("the Act") termination provisions, 17 U.S.C. §§ 203, 304, and then resolve the application of various judicially-created abstention doctrines to claims brought by Plaintiffs Deanna Brown-Thomas, Yamma Brown, Michael D. Brown, Nicole C. Brown, Jeanette Mitchell Bellinger, Sarah LaTonya Fegan, Ciara Pettit, and Cherquarius Williams (collectively, "Plaintiffs"). (*See* ECF Nos. 80, 81, 85, 101.) Defendant Bauknight's Motion requires the court to settle a remaining ground, involving personal jurisdiction, under Federal Rule of Civil Procedure 12(b)(2). (*See* ECF No. 80-1.) The court held arguments on these matters on June 19, 2019. (ECF No. 180.) After careful consideration of the filings of Plaintiffs and Defendants, the court **DENIES IN PART** Defendants Bauknight, Hynie, and Brown's Motions to Dismiss (ECF Nos. 80, 81, 101) under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(2). [2] In addition, the court **DENIES** the entirety of Defendant Sojourner's Motion to Dismiss (ECF No. 85).

I. FACTUAL, PROCEDURAL, AND STATUTORY BACKGROUND

A. Relevant Factual Background and State Court Litigation

James J. Brown ("James Brown") was an American singer that was born in Barnwell, South

[2] Within the instant Order and Opinion, the court declines to resolve that last remaining ground forming the bases of Defendants' Motions to Dismiss, which is whether Plaintiffs have sufficiently stated a claim under Rule 12(b)(6) under the Federal Rules of Civil Procedure. (*See* ECF Nos. 80-1, 81, 101.) A ruling on that remaining ground is forthcoming. *See generally Crussel ex rel. J.C. v. Electrolux Home Prods., Inc.*, No. 06-CV-4042, 2007 WL 1020444, at *5 (W.D. Ark. Apr. 2, 2007) ("The remainder of the summary judgment motion will be considered when the [c]ourt rules on Defendant's Motion to Dismiss."); *Cash Today of Tex., Inc. v. Greenberg*, No. 4:01–CV–794–A, 2003 WL 44132, at *1 (N.D. Tex. Jan. 3, 2003) (holding the remaining grounds of a motion for summary judgment in abeyance and addressing the motion in part).

Carolina. *See* Harry Weinger & Cliff White, *Biography About James*, JAMES BROWN, http://www.jamesbrown.com/bio (last visited Jan. 20, 2019).[3] Some of James Brown's greatest songs include, but are not limited to, the following: "I Got You (I Feel Good)," "Living in America," "Cold Sweat (Part 1)," and "Say it Loud–I'm Black and I'm Proud."[4] Kirstin Corpuz, *James Brown's Biggest Billboard Hot 100 Hits*, BILLBOARD (May 3, 2017), https://www.billboard.com/articles/columns/chart-beat/7775674/james-brown-songs-billboard-hot-100-hits. He married Defendant Hynie in December 2001. (ECF No. 1 at 10 ¶ 38.) Through the union of Defendant Hynie and James Brown, Defendant Brown was born in 2001. (ECF No. 81 at 10.) On the morning of December 25, 2006, James Brown died. (ECF No. 1 at 3 ¶ 7.) James Brown's will omitted both Defendant Hynie and Defendant Brown. (*Id.* at 11 ¶ 41.)

In 2007, Defendant Hynie and Defendant Brown brought challenges to James Brown's will and trust in the state courts of South Carolina. (*Id.* at 11 ¶ 42.) Defendant Hynie filed for her spousal rights in South Carolina, claiming a statutory elective share and a one-half omitted

[3] Under the Federal Rules of Evidence, the court is permitted to "take judicial notice on its own." FED. R. EVID. 201(c). Moreover, the court may take judicial notice of a fact "that is not subject to reasonable dispute" because it is either "generally known within the trial court's territorial jurisdiction" or "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." FED. R. EVID. 201(b)(1)–(2). Based upon the pleadings, there is no dispute concerning where James Brown was born or the biographical contents of his website. (ECF Nos. 1, 80, 81, 85, 89, 96, 97, 98, 101, 103, 104.) Additionally, provided that the website on which the facts are based is James Brown's official website, James Brown's birthplace is a fact that may be "accurately and readily determined" from a source "whose accuracy cannot reasonably be questioned." FED. R. EVID. 201(b)(2). *See generally Doron Precision Sys., Inc. v. FAAC, Inc.*, 423 F. Supp. 2d 173, 179 n.8 (S.D.N.Y. 2006) (taking judicial notice of information "publicly announced on a party's website" because the authenticity was not in dispute, and the information was "capable of accurate and ready determination." (quoting FED. R. EVID. 201(b))). The court takes judicial notice of the website only for purposes of indicating the birthplace of James Brown. *See Coal. for a Sustainable Delta v. Fed. Emergency Mgmt. Agency*, 812 F. Supp. 2d 1089, 1093 (E.D. Cal. 2011) ("[J]udically noticed documents may be considered only for limited purposes.").

[4] Pursuant to Federal Rule of Evidence 201(b), the court takes judicial notice of Billboard.com for the limited purpose of identifying some of James Brown's greatest songs. *See Coal. for a Sustainable Delta*, 812 F. Supp. 2d at 1093.

spouse's share, while Defendant Brown asserted his state statutory child share as a lawful heir. (ECF No. 80-1 at 3.) James Brown's adult children also brought challenges to set aside his will. *See Wilson v. Dallas*, 743 S.E.2d 746, 750–51 (S.C. 2013). (*See also* ECF No. 80-1 at 3; ECF No. 80-2 at 29.) As a result of these collective challenges, James Brown's will was submitted to the Probate Court of Aiken County, South Carolina. (ECF No. 1 at 11 ¶ 42.) Eventually, the Probate Court of Aiken County, South Carolina, transferred the administration of James Brown's estate to the Aiken County Court of Common Pleas. (ECF No. 1 at 11 ¶ 43; ECF No. 80-1 at 4.)

Following extensive litigation in the Aiken County Court of Common Pleas, in 2013, the South Carolina Supreme Court reversed the trial court's approval of a family settlement regarding James Brown's estate, upheld the removal of several fiduciaries, and remanded the case for the appointment of new fiduciaries. (ECF No. 85 at 4 (citing *Wilson*, 743 S.E.2d at 768).) On October 1, 2013, the Aiken County Court of Common Pleas appointed Defendant Bauknight to serve as the personal representative of the estate and trustee of the trust. (ECF No. 85-1 at 27–29.) On October 10, 2013, Defendant Sojourner was appointed as a limited special administrator of James Brown's estate and tasked with defending the estate against legal challenges. (ECF No. 85-1 at 35–36 ¶¶ 3–4.)

In 2015, the Aiken County Court of Common Pleas determined that Defendant Hynie was the surviving spouse of James Brown. (ECF No. 80-1 at 6.) During that same year, the lower court held that Defendant Brown was the biological son and a lawful heir to James Brown. (ECF No. 101-4.) In 2018, the South Carolina Court of Appeals also held that Defendant Hynie was the surviving spouse of James Brown. *See In re Estate of Brown*, 818 S.E.2d 770, 776 (S.C. Ct. App. 2018) ("Therefore, we find the trial court did not err in finding [Defendant Hynie] was married to

Brown.").[5] Currently, Plaintiffs are appealing the spousal status of Defendant Hynie to the South Carolina Supreme Court (ECF No. 151 at 4) and, as represented to the court during a hearing held on June 19, 2019, the parties have completed briefing concerning that matter.[6] (*See* ECF No. 180.)

B. Relevant Statutory Provisions: The Copyright Act of 1976

The Copyright Act of 1976 contains two provisions expressly relating to the termination of copyright grants. *See* 17 U.S.C. §§ 203, 304(c). *See also* Lydia Pallas Loren, *Renegotiating the Copyright Deal in the Shadow of the "Inalienable" Right to Terminate*, 62 FLA. L. REV. 1329, 1331 (2010) ("Few people realize that many contracts that purport to transfer 'all right, title and interest' in a copyright can be terminated by the author of the copyrighted work after thirty-five years (in some cases), after fifty-six years (in other cases), and sometimes even after seventy-five years."). Congress enacted these statutory provisions to address "the unequal bargaining position of authors, resulting in part from the impossibility of determining a work's value until it has been exploited," and safeguard authors from the "unremunerative transfers" of copyright grants. H.R. REP. NO. 94-1476, at 124 (1976). *See also Mills Music, Inc. v. Snyder*, 469 U.S. 153, 172–73 (1985) ("[T]he termination right was expressly intended to relieve authors of the consequences of

[5] Generally, under the Federal Rules of Evidence, a federal court "may properly take judicial notice of 'matters of public record' and other information that, under Federal Rule of Evidence 201, constitute 'adjudicative facts.'" *Goldfarb v. Mayor & City Council of Balt.*, 791 F.3d 500, 508–09 (4th Cir. 2015) (citations omitted). *See generally Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) ("We may take judicial notice of court filings and other matters of public record." (citation omitted)); *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) ("We note that '[t]he most frequent use of judicial notice of ascertainable facts is in noticing the content of court records.'" (citation omitted)).

[6] During a hearing on January 22, 2019, Plaintiffs and Defendants readily acknowledged that Plaintiffs are seeking review of Defendant Hynie's spousal status by the South Carolina Supreme Court. Pursuant to the Federal Rules of Evidence, the court takes judicial notice that this matter is currently pending before the South Carolina Supreme Court. *See* FED. R. EVID. 201(b). *See also City of Amsterdam v. Daniel Goldreyer, Ltd.*, 882 F. Supp. 1273, 1278 (E.D.N.Y. 1995) ("[T]his [c]ourt is required to take judicial notice of the pending state court action.").

ill-advised and unremunerative grants that had been made before the author had a fair opportunity to appreciate the true value of his work product." (footnote omitted)); Peter S. Menell & David Nimmer, *Judicial Resistance to Copyright Law's Inalienable Right to Terminate Transfers*, 33 COLUM. J.L. & ARTS 227, 227 (2010) ("For a century, Congress has sought to protect authors and their families by allowing them to grant their copyrights for exploitation and then, decades later, recapture those same rights."). As to the special nature of these provisions, the United States Supreme Court has noted that the Copyright Act of 1976 "provides an inalienable termination right" for both authors and his or her statutory heirs. *Stewart v. Abend*, 495 U.S. 207, 230 (1990) (citing 17 U.S.C. §§ 203, 304).

Section 203 of the Copyright Act of 1976 concerns, besides a work made for hire, "the exclusive or nonexclusive grant of a transfer or license of copyright or of any right under a copyright" made "on or after" January 1, 1978. 17 U.S.C. § 203(a). It only applies to copyright grants executed by the author. *Id.* § 203(a). As expressly contemplated by this provision, a previous copyright grant may be terminated if certain conditions are met. *See id.* §§ 203(a)(1)–(5). For example, as one condition, section 203 permits holders of the termination right to only effect termination "during a period of five years beginning at the end of thirty-five years from the date of execution of the grant." *See id.* § 203(a)(3). Additionally, if an author is deceased, the termination right is intricately divided among an author's issue, which inevitably impacts whether or not a termination right may be exercised because one-half of an author's termination interest is required for termination. *See id.* §§ 203(a)(1)–(2). If an author, or his or her statutory heirs, successfully terminates a grant of a copyright, or any right thereunder, by complying with the appropriate conditions, then those previous rights "that were covered by the terminated grants revert to the author, authors, and other persons owning termination interests . . . , including those

owners who did not join in signing the notice of termination . . . ," but subject to some statutory limitations. *Id.* §§ 203(b)(1)–(6). "Termination of [a copyright] grant may be effected *notwithstanding any agreement to the contrary*, including an agreement to make a will or to make a future grant." *Id.* § 203(a)(5) (emphasis added).

Section 304(c) of the Copyright Act of 1976 is "a close but not exact counterpart of section 203." H.R. REP. NO. 94-1476, at 140. Differentiating section 304(c) from section 203, section 304(c) only applies to "any copyright subsisting in either its first or renewal term on January 1, 1978," and, "other than a copyright in a work made for hire," section 304(c) only permits the termination of "the exclusive or nonexclusive grant of a transfer or license of the renewal copyright or any right under it, executed before January 1, 1978[] . . . ." 17 U.S.C. § 304(c). Similar to section 203, under section 304(c), terminations may be executed "at any time during a period of five years", but "beginning at the end of fifty-six years from the date [the] copyright was originally secured, or beginning on January 1, 1978, whichever is later." *Id.* § 304(c)(3). A termination under this provision may be exercised by a simple majority of the holders of the termination right. *Id.* § 304(c)(1). Subject to some limitations, when a successful termination is executed, "all rights . . . that were covered by the terminated grant revert, upon the effective date of [the] termination, to all those entitled to terminate the grant . . . ." *Id.* § 304(c)(6). In contrast to section 203, section 304(c) "extends to grants executed by those beneficiaries of the author who can claim renewal under the present law: his or her widow or widower, children, executors, or next of kin." H.R. REP. NO. 94-1476, at 140. Nevertheless, further corresponding to section 203, section 304(c) proclaims that "[t]ermination of [a copyright] grant may be effected *notwithstanding any agreement to the contrary*, including an agreement to make a will or to make a future grant." 17 U.S.C. § 304(c)(5) (emphasis added).

In sum, both sections 203 and 304(c) allow authors or their statutory heirs "to terminate the rights of a grantee to whom the author had transferred rights in the original work." *Marvel Characters, Inc. v. Simon*, 310 F.3d 280, 284 (2d Cir. 2002) (citations omitted). Of note, sections 203 and 304(c) do not mention *who* may challenge the existence of "an agreement to the contrary" that impacts termination rights or the validity of termination notices. *See* 17 U.S.C. §§ 203, 304(c). *See also Ray Charles Found. v. Robinson*, 795 F.3d 1109, 1113 (9th Cir. 2015) ("Both § 203 and § 304(c) are silent on who may challenge the validity of termination notices."). Finally, an original grant will remain in effect "[i]f the termination right is not exercised" during the applicable statutory window. *Penguin Grp. (USA) Inc. v. Steinbeck*, 537 F.3d 193, 199 (2d Cir. 2008). *See also* 17 U.S.C. §§ 203(a)(3), 304(c)(3).

C. Plaintiffs' Allegations and the Current Proceedings

Plaintiffs originally filed their Complaint on January 12, 2018, in the United States District Court for the Central District of California, and the Complaint was subsequently transferred to the United States District Court for the District of South Carolina on August 7, 2018. (ECF Nos. 1, 74.) First, Plaintiffs seek relief from the court under the Copyright Act, 17 U.S.C. §§ 203, 304, and the Declaratory Judgment Act, 28 U.S.C. § 2201. (*Id.* at 20–22 ¶¶ 74–77.) As it relates to the court's subject-matter jurisdiction, Plaintiffs believe that the court has "original[,] subject-matter jurisdiction over the claims set forth in [the] [C]omplaint pursuant to the Copyright Act, 17 U.S.C. § 101 *et seq.*, 28 U.S.C. §§ 1331, 1332, and 1338(a) and (b), and the Declaratory Judgment Act, 28 U.S.C. § 2201." (*Id.* at 2 ¶ 2.) Regarding the essence of their copyright allegations, Plaintiffs contend that Defendants have "conspired . . . to usurp [their] rights and interests in [James] Brown's [c]ompositions." (*Id.* at 4 ¶ 13.) In attempting to impact their statutory rights, Plaintiffs believe that Defendants have wrongfully deprived them of their termination interests pursuant to

a secret "Settlement Agreement" and "Concealed Terms" and failed to comply with the appropriate procedures of the Copyright Act. (*Id.* at 17, 20–21 ¶¶ 60–62, 75–76.)

Within their Complaint, Plaintiffs specifically maintain that they are "informed and believe . . . that in the Concealed Terms, Hynie, . . . , improperly agreed, . . . that she would not exercise the termination rights as to some or all of the remaining Compositions as to which she had not yet served termination notices, to circumvent Plaintiffs' statutory termination interests while using the leverage of termination to enhance Hynie's compensation." (*Id.* at 19 ¶ 71.) In this same vein, Plaintiffs submit that Defendants' "improper agreements convert Plaintiffs' share of the financial proceeds from their termination interests in the [c]ompositions, encumbering, diluting and/or effectively destroying Plaintiffs' termination interests." (*Id.* at 19–20 ¶ 72.) In violation of 17 U.S.C. §§ 203(a)(5) and 304(c)(5), both of which prohibit "agreement[s] to the contrary" in relation to the termination of a copyright grant, Plaintiffs allege that Defendant Hynie's "aforementioned agreements are void *ab initio* and unenforceable as they directly or indirectly settle, waive, hypothecate and/or encumber the termination rights and interests . . . ." (*Id.* at 20 ¶ 73 (emphasis in original).) Additionally, Plaintiffs contend that "Hynie's disclosed agreement to transfer to the Trust the majority of proceeds from the termination interests (inclusive of the 2013 Hynie Terminations) or Concealed Terms to transfer the copyright interests to be recaptured via notices of termination (inclusive of the 2013 Hynie Terminations) prior to the effective dates thereof" is in violation of the Copyright Act's provisions proscribing the ability to make grants of a copyright until after the effective date of a termination. (*See id.* at 20–21 ¶¶ 74–75 (citing 17 U.S.C. §§ 304(c)(6)(D), 203(b)(4)).) Therefore, Plaintiffs seek a declaration establishing that a "Settlement Agreement" or any "Concealed Terms," specifically among Defendants, is unenforceable and void as a matter of law. (*Id.* at 21 ¶ 76.) Lastly, Plaintiffs maintain that they are

"entitled to a preliminary injunction during the pendency of this action, and thereafter to a permanent injunction . . . ." (*Id.* at 22 ¶ 77.)

In addition to their allegations under the Copyright Act, Plaintiffs bring a range of state law claims arising under common law.[7] (*Id.* at 22–31 ¶¶ 78–114.) Specifically, Plaintiffs allege the following: (1) accounting; (2) conversion; (3) unjust enrichment; (4) intentional interference with prospective economic advantage; (5) negligent interference with prospective economic advantage; and (6) common law unfair competition. (*Id.* at 22–23, 27–28, 30 ¶¶ 79, 84, 97, 102, 109.) Pursuant to 28 U.S.C. § 1367(a), Plaintiffs' Complaint submits that the court possesses supplemental jurisdiction over these state law claims. (*Id.* at 2 ¶ 3.)

On September 10, 2018, Defendant Bauknight filed his Motion to Dismiss Plaintiffs' Complaint. (ECF No. 80-1.) Defendant Bauknight's Motion to Dismiss was followed, respectively, by the filing of Defendant Hynie's Motion to Dismiss on September 11, 2018, Defendant Sojourner's Motion to Dismiss on September 19, 2018, and Defendant Brown's Motion to Dismiss on October 10, 2018. (ECF Nos. 81, 85, 101.) Within the majority of the Motions to Dismiss, Defendants first assert that the court lacks subject-matter jurisdiction under the Copyright Act because the Complaint only contemplates "contract issues and tort claims under state law" as it relates to whether Defendants' alleged purposed agreements are void and unenforceable. (ECF No. 80-1 at 18; ECF No. 81 at 16; ECF No. 101 at 8.) Defendants also contend that the Copyright Act does not provide a remedy regarding its termination provisions and argue, very conclusory, that Plaintiffs' Complaint does not require an interpretation of the Copyright Act and federal

[7] Neither Plaintiffs nor Defendants have briefed whether the state law claims are now based upon the common laws of California or South Carolina after this matter was transferred to this court from the United States District Court for the Central District of California. (*See* ECF Nos. 80-1, 81, 85, 96, 97, 98, 101, 111.) The court advises the parties that this determination does not appear to be relevant for resolving the grounds of the Motions to Dismiss addressed in this order.

principles do not control "what are obviously contract, tort, and breaches of purported duties under state law." (ECF No. 80-1 at 20; ECF No. 81 at 18; ECF No. 101 at 10.) In essence, Defendants believe that Plaintiffs' invocation of the Copyright Act is a "feeble" attempt to create subject-matter jurisdiction under the Copyright Act. (ECF No. 80-1 at 19; ECF No. 81 at 16; ECF No. 101 at 9.)

Defendants do not only bring challenges to the court's subject-matter jurisdiction under the Copyright Act within their Motions to Dismiss.[8] (*See* ECF Nos. 80-1, 81, 85, 101.) As a constitutional prerequisite, all Defendants purport that the Complaint's allegations are not ripe under the United States Constitution because Plaintiffs are "currently appealing the surviving spouse issue in the South Carolina state appellate courts." (ECF No. 80-1 at 30; ECF No. 81 at 18–19; ECF No. 85 at 9–11; ECF No. 101 at 10–11.) Moreover, in the event the court determines that it has subject-matter jurisdiction, some Defendants request the court to abstain from entertaining the action initiated by Plaintiffs. (*See* ECF Nos. 80-1, 85, 101.) For example, both Defendants Bauknight and Sojourner invoke a probate exception to the exercise of the court's subject-matter jurisdiction, while Defendant Brown requests the court to apply the *Rooker-Feldman* doctrine and *Younger* abstention. (*See* ECF No. 80-1 at 10–11; ECF No. 85 at 12–14; ECF No. 101 at 13–15.) Regarding the probate exception, Defendants Bauknight and Sojourner, respectively, assert that Plaintiffs' suit "specifically seek[s] an order from this [c]ourt concerning property (copyrights and

[8] The court has already denied the personal jurisdiction challenges brought forth by Defendant Brown and Defendant Hynie within their Motions to Dismiss. *See Brown-Thomas v. Hynie*, 367 F. Supp. 3d 452, 469 (D.S.C. 2019). As it relates to the personal jurisdiction matters, the court held that it was a "pointless exercise" to dismiss Plaintiffs' Complaint because Plaintiffs could, for a second time, attempt service upon Defendant Brown and Defendant Hynie, without any time constraints, under Rule 4(m) of the Federal Rules of Civil Procedure. *Id.* at 467–69. To date, Defendant Brown and Defendant Hynie have been properly served as indicated by the Proof of Service of Summons on the court's docket. (ECF Nos. 175-1, 175-2.)

termination rights) that [is] being dealt with in the South Carolina probate and appellate courts" and "granting the relief sought would usurp the probate court's power to administer the [e]state and disturb or affect property that is in the custody of the state court." (*See* ECF No. 80-1 at 11; ECF No. 85 at 13.) Defendant Brown claims that Plaintiffs "are seeking to re-litigate the issue of [his] paternity . . . to his father." (ECF No. 101 at 14.) Only Defendant Sojourner argues that the court should apply the *Colorado River* abstention doctrine because Plaintiffs are "pursuing parallel, duplicative proceedings in South Carolina." (ECF No. 85 at 14.) As another ground within his Motion to Dismiss, Defendant Bauknight sought dismissal of Plaintiffs' Complaint for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2). (ECF No. 80-1 at 20–29.)

Plaintiffs filed their first Response in Opposition on October 4, 2018, which was followed by other Responses in Opposition, respectively, on October 8, 2018, and October 24, 2018. (ECF Nos. 96, 97, 98, 111.) Concerning the court's subject-matter jurisdiction, Plaintiffs emphasize that they "plead that [undisclosed] agreements (including Defendants' Purported Settlement Agreement and Concealed Terms) are void under §§ 304(c) and 203(a), which provide that the termination right may be exercised '[n]otwithstanding any agreement to the contrary' and place strict time limits on when a statutory heir may assign termination interests." (ECF No. 96 at 11; ECF No. 97 at 13; ECF No. 111 at 16.) Specifically, Plaintiffs argue that they possess a private right of action to pursue their claims, and the Copyright Act affords them a remedy to redress those claims. (*See* ECF No. 96 at 12–13; ECF No. 97 at 14; ECF No. 111 at 17–18.) Even if the court held that they do not have a remedy under the Copyright Act, Plaintiffs contend that their claims necessarily require an interpretation of the Copyright Act's "detailed termination provisions" because they allege that "Defendants' agreement(s) violate and/or circumvent these express restrictions in §§ 304(c) and 203(a) by waiving, pre-assigning, or pre-encumbering Hynie/JBII's

termination rights and interests . . . .” (ECF No. 96 at 14; ECF No. 97 at 15; ECF No. 111 at 19.) According to Plaintiffs, the court possesses subject-matter jurisdiction because Plaintiffs challenge that Defendants’ agreements are “invalid *under the Copyright Act*, providing the [c]ourt with unambiguous subject[-]matter jurisdiction” and do not seek to challenge the legality of those agreements under state law. (*See* ECF No. 96 at 15 (emphasis in original); ECF No. 97 at 16 (emphasis in original); ECF No. 111 at 19–20 (emphasis in original).)

After vigorously maintaining that their Complaint confers subject-matter jurisdiction upon the court, Plaintiffs then address all of the alternative grounds, raised by Defendants, for the dismissal of their Complaint. (*See* ECF Nos. 96, 97, 98, 111.) Taking up whether their suit is ripe, Plaintiffs assert that their claims “will continue regardless of Hynie’s spousal status, and are therefore fit for adjudication, and Plaintiffs will incur immediate and continuing injury without [c]ourt intervention.” (ECF No. 96 at 17; ECF No. 97 at 24; ECF No. 98 at 12–13; ECF No. 111 at 22.) According to Plaintiffs, their “claims and injuries exist independent of Hynie’s spousal status,” thereby making them fit for judicial decision, because “reversal of the spousal status does not unwind [any] agreement(s) with third-parties diminishing Plaintiffs’ share of revenues from the [c]ompositions.” (ECF No. 96 at 18; ECF No. 97 at 25; ECF No. 98 at 14; ECF No. 111 at 23–24.) Plaintiffs also emphasize that their current injuries will be exacerbated without judicial intervention. (*See* ECF No. 96 at 22; ECF No. 97 at 26–28; ECF No. 98 at 17–18; ECF No. 111 at 26–27.) As it concerns the application of the probate exception, Plaintiffs stress that the “[termination] interests pass exclusively under the Copyright Act, not by testamentary or intestate succession and are therefore not the subject of any probate proceeding.” (ECF No. 97 at 18; ECF No. 98 at 21.) Moreover, Plaintiffs note that their termination interests in certain compositions “derive from federal law, and are not subject to testamentary succession, those interests fall

'outside' any South Carolina probate proceeding."[9] (ECF No. 97 at 19; ECF No. 98 at 22.)

Regarding Defendant Sojourner's invocation of abstention under *Colorado River*, Plaintiffs first argue that this action is not "parallel" to the probate proceedings in state court because the parties differ and the legal issues are entirely distinct. (ECF No. 98 at 24–29.) They further urge the court to reject the application of *Colorado Rivers* as the factors weigh against abstention. (*Id.* at 29–33.) Turning to Defendant Brown's application of the *Rooker-Feldman* doctrine, Plaintiffs reason that Defendant Brown's invocation of the doctrine is frivolous as they do not seek review of an adverse judgment from a state court. (ECF No. 111 at 15–16.) Lastly, as to Defendant Bauknight's challenge to personal jurisdiction on behalf of the estate, Plaintiffs maintain that his challenge is not possible because he has already conceded that he, as the estate's personal representative, is a citizen of South Carolina and the estate's relevant activities occurred within South Carolina. (ECF No. 97 at 32.) For those reasons, Plaintiffs request the court to deny these grounds of Defendants' Motions to Dismiss. (*See* ECF No. 96 at 27; ECF No. 97 at 32, ECF No. 98 at 34; ECF No. 111 at 32.)

On June 19, 2019, the court heard arguments from the parties concerning the court's subject-matter jurisdiction, the various exceptions to the court's exercise of jurisdiction, and whether Plaintiffs have sufficiently stated a claim within their Complaint. (*See* ECF Nos. 178, 180.) During the hearing, Defendant Hynie first maintained that Plaintiffs lack constitutional

[9] Interestingly, during their litigation with Defendants in state court, Plaintiffs contend that Defendants essentially conceded the probate exception because they expressly opined that termination rights under the Copyright Act are not probate assets. (ECF No. 97 at 20; ECF No. 98 at 22–23.) As the court's reasoning about application of the probate exception does not implicate whether Defendants conceded this issue, the court need not make any findings about whether Defendants are judicially estopped from changing their positions. *See supra* Part III.D.

standing and do not possess a private right of action for their claims.[10] (ECF No. 180.) In addition, Defendants claim that Plaintiffs' Complaint does not confer subject-matter jurisdiction upon the court because it does not seek a remedy under the Copyright Act and, without proffering a reason, nor does it require an interpretation of the Copyright Act and federal principles do not control the underlying dispute. (*Id.*) In opposition, of course, Plaintiffs argued that the court possesses jurisdiction under the Copyright Act, and this jurisdictional matter is so clear that courts do not address the issue when dealing with the Copyright Act's termination provisions. (*Id.*) The court also heard arguments relating to the various judicially-created abstention doctrines and whether Plaintiffs have sufficiently stated a claim within their Complaint. (*Id.*) Because these matters concerning the court's subject-matter jurisdiction and exceptions thereof have been fully briefed and vigorously argued, they are now ripe for the court's review and judicial resolution. *See Brown-Thomas v. Hynie*, 367 F. Supp. 3d 452, 460 (D.S.C. 2019) (quoting *Sauls v. Wyeth Pharm., Inc.*, 846 F. Supp. 2d 499, 501 (D.S.C. 2012)).

[10] As a threshold matter that is worth addressing, it is true that issues involving the court's subject-matter jurisdiction cannot be "forfeited or waived." *United States v. Cotton*, 535 U.S. 625, 630 (2002). However, Defendant Hynie's Motion to Dismiss did not include any issues, whatsoever, pertaining to Plaintiffs' constitutional standing or whether they possessed a private right of action. (*See* ECF No. 81.) Although the court will address these matters implicating the court's subject-matter jurisdiction, *sua sponte*, it is inappropriate for Defendant Hynie to raise important, substantive issues, that were never briefed, at oral argument because such actions significantly undermine the adversary system by putting Plaintiffs at an unfair disadvantage to counter unanticipated arguments. *See N.C. All. for Transp. Reform, Inc. v. U.S. Dep't of Transp.*, 713 F. Supp. 2d 491, 510 (M.D.N.C. 2010) ("Raising such *new arguments for the first time at oral argument* undermines the purpose of orderly briefing and risks subjecting an opponent to an unfair disadvantage." (emphasis added)). *See also In re Under Seal*, 749 F.3d 276, 292 (4th Cir. 2014) ("And '[a] party's failure to raise or discuss an issue in his brief is to be deemed an abandonment of that issue.'" (quoting *Mayfield v. Nat'l Ass'n for Stock Car Auto Racing, Inc.*, 674 F.3d 369, 377 (4th Cir. 2012)); *Customers Bank v. Harvest Cmty. Bank*, C/A No. 12-cv-5878 (JBS/KMW), 2014 WL 4182348, at *6 n.5 (D.N.J. Aug. 20, 2014) ("A 'newly minted argument raised for the first time during oral argument' is 'problematic.'" (quoting *Millipore Corp. v. W.L. Gore & Assocs., Inc.*, C/A No. 11-1453 (ES), 2011 WL 5513193, at *9 (D.N.J. Nov. 9, 2011))).

II. LEGAL STANDARDS

A. Article III Standing and Ripeness Doctrine

i. Article III Standing

Article III of the United States Constitution limits the jurisdiction of federal courts to "[c]ases" and "[c]ontroversies." U.S. CONST. art. III, § 2, cl. 1. *See also Flast v. Cohen*, 392 U.S. 83, 94 (1968) ("The jurisdiction of federal courts is defined and limited by Article III of the Constitution."). The Supreme Court, on countless occasions, has stressed that "[t]he concept of standing is part of this limitation." *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 37 (1976). *See also Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157 (2014) ("The doctrine of standing gives meaning to these constitutional limits by identify[ing] those disputes which are appropriately resolved through the judicial process." (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992))). The concept of standing ensures that a party possesses "the requisite stake in the outcome of a case 'at the outset of the litigation.'" *Deal v. Mercer Cty. Bd. of Educ.*, 911 F.3d 183, 187 (4th Cir. 2018) (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180 (2000)).

In order to establish Article III standing, "a plaintiff must show (1) an 'injury in fact,' (2) a sufficient 'causal connection between the injury and the conduct complained of,' and (3) a 'likel[ihood]' that the injury 'will be redressed by a favorable decision.'" *Susan B. Anthony List*, 573 U.S. at 157–58 (quoting *Defs. of Wildlife*, 504 U.S. at 560–61). First, an injury in fact is established when a plaintiff shows that "he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016) (quoting *Defs. of Wildlife*, 504 U.S. at 560). Second, "[t]raceability is established if it is 'likely that the injury was caused by

the conduct complained of and not by the independent action of some third party not before the court." *Doe v. Va. Dep't of State Police*, 713 F.3d 745, 755 (4th Cir. 2013) (quoting *Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149, 154 (4th Cir. 2000)). Lastly, to satisfy redressability, "a plaintiff 'must show that it is likely, as opposed to merely speculative that the injury will be redressed by a favorable decision.'" *Deal*, 911 F.3d at 189 (quoting *Sierra Club v. U.S. Dep't of the Interior*, 899 F.3d 260, 284 (4th Cir. 2018)) (internal quotation marks omitted).

"Standing implicates the court's subject-matter jurisdiction and may be challenged in a motion to dismiss under Rule 12(b)(1) of the Federal Rules of Civil Procedure." *Heindel v. Andino*, 359 F. Supp. 3d 341, 351 (D.S.C. 2019) (citing *Wikimedia Found. v. Nat'l Sec. Agency*, 857 F.3d 193, 208 (4th Cir. 2017); *Beyond Sys., Inc. v. Kraft Foods, Inc.*, 777 F.3d 712, 715 (4th Cir. 2015)). "The party attempting to invoke federal jurisdiction bears the burden of establishing standing." *Miller v. Brown*, 462 F.3d 312, 316 (4th Cir. 2006) (citing *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 215 (1990)). "For purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." *Warth v. Seldin*, 422 U.S. 490, 501 (1975) (citing *Jenkins v. McKeithen*, 395 U.S. 411, 421–22 (1969)). "At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we 'presum[e] that general allegations embrace those specific facts that are necessary to support the claim.'" *Defs. of Wildlife*, 504 U.S. at 561 (quoting *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 889 (1990)). "Nevertheless, the party invoking the jurisdiction of the court must include the necessary factual allegations in the pleading, or else the case must be dismissed for lack of standing." *Bishop v. Bartlett*, 575 F.3d 419, 424 (4th Cir. 2009) (citing *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)). "When a defendant raises standing as the

basis for a motion under Rule 12(b)(1) to dismiss for lack of subject matter jurisdiction, . . . the district court 'may consider evidence outside the pleadings without converting the proceeding to one for summary judgment.'" *White Trail Park, Inc. v. Stroube*, 413 F.3d 451, 459 (4th Cir. 2005) (quoting *Richmond, Fredericksburg & Potomac R.R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991)). A federal district court is "powerless to create its own jurisdiction by embellishing otherwise deficient allegations of standing." *Whitmore v. Arkansas*, 495 U.S. 149, 155–56 (1990) (citing *Warth*, 422 U.S. at 508).

ii. **Constitutional Ripeness Doctrine**

"The ripeness doctrine is 'drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction' . . . ." *Nat'l Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 808 (2003) (quoting *Reno v. Catholic Soc. Servs.*, 509 U.S. 43, 57 (1993)). Ripeness doctrine's "basic rationale is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements . . . ." *Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99, 105 (1977). "As with standing, ripeness is a question of subject[-]matter jurisdiction." *South Carolina v. United States*, 912 F.3d 720, 730 (4th Cir. 2019) (citing *Sansotta v. Town of Nags Head*, 724 F.3d 533, 548 (4th Cir. 2013)).

In the majority of instances, "[a] claim should be dismissed as unripe if the plaintiff has not yet suffered injury and any future impact 'remains wholly speculative.'" *Doe*, 713 F.3d at 758 (quoting *Gasner v. Bd. of Supervisors*, 103 F.3d 351, 361 (4th Cir. 1996)). In order to determine whether a claim is ripe, a federal court must "balance the fitness of the issues for judicial decision with the hardship to the parties of withholding court consideration. A case is fit for judicial decision when the issues are purely legal and when the action in controversy is final and not dependent on

future uncertainties." *Id.* (quoting *Miller v. Brown*, 462 F.3d 312, 319 (4th Cir. 2006)). *See also Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 201 (1983) ("[T]he question of ripeness turns on 'the fitness of the issues for judicial decision' and 'the hardship to the parties of withholding court consideration.'" (citation omitted)). Essentially, "[t]o be fit for judicial review, a controversy should be presented in a 'clean-cut and concrete form.'" *South Carolina*, 912 F.3d at 730 (quoting *Miller*, 462 F.3d at 319). *See also Scoggins v. Lee's Crossing Homeowners Ass'n*, 718 F.3d 262, 270 (4th Cir. 2013) ("A case is fit for adjudicating 'when the action in controversy is final and not dependent on future uncertainties.'" (quoting *Miller*, 462 F.3d at 319; *Franks v. Ross*, 313 F.3d 184, 195 (4th Cir. 2002))). "A claim is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Texas v. United States*, 523 U.S. 296, 300 (1998) (quoting *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580–81 (1985)). A plaintiff bears the burden of proving ripeness. *See Miller*, 462 F.3d at 319.

B. Subject-Matter Jurisdiction Under the Copyright Act

Subject-matter jurisdiction "involves a court's power to hear a case" and may never be "forfeited or waived." *United States v. Cotton*, 535 U.S. 625, 630 (2002). A federal court has an "independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006) (citing *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999)). Under the Federal Rules of Civil Procedure, a party may move to dismiss an action for "lack of subject-matter jurisdiction." FED. R. CIV. P. 12(b)(1). Generally, 28 U.S.C. § 1338, "which is specific to copyright claims," confers subject-matter jurisdiction upon federal courts when a copyright claim is at issue. *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 164–65 (2010).

28 U.S.C. § 1338 provides the following: "The district courts *shall have original jurisdiction* of any civil action *arising under* any Act of Congress relating to patents, plant variety protection, copyrights, and trademarks. *No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights. For purposes of this subsection, the term "State" includes any State of the United States . . . .*" (emphasis added). However, "it is well established that just because a case involves a copyright does not mean that federal subject[-]matter jurisdiction exists." *Scholastic Entm't, Inc. v. Fox Entm't Grp., Inc.*, 336 F.3d 982, 985 (9th Cir. 2003) (citing *Vestron, Inc. v. Home Box Office, Inc.*, 839 F.2d 1380, 1381 (9th Cir. 1988)). For purposes of deciding subject-matter jurisdiction in this perplexing area of the law, the United States Court of Appeals for the Second Circuit developed a three-part test in order to determine whether a claim "arises under" the Copyright Act. *See T.B. Harms Co. v. Eliscu*, 339 F.2d 823, 828 (2d Cir. 1964). In *T.B. Harms*, Judge Friendly held that "an action 'arises under' the Copyright Act *if and only if* the complaint": (1) "[asks] for a remedy expressly granted by the Act, e.g., a suit for infringement or for the statutory royalties for record reproduction"; (2) "asserts a claim requiring construction of the Act"; or (3) "presents a case where a distinctive policy of the Act requires that federal principles control the disposition of the claim." *Id.* (internal citations omitted). For the last prong, "[t]he general interest that copyrights, like all other forms of property, should be enjoyed by their true owner is not enough to meet this last test." *Id.* "[The *T.B. Harms*] test 'is essentially a reiteration of the 'well-pleaded complaint' rule that federal jurisdiction exists only when a federal question is presented on the face of a properly pleaded complaint." *Image Software, Inc. v. Reynolds & Reynolds Co.*, 459 F.3d 1044, 1051 (10th Cir. 2006) (quoting *Scholastic Entm't, Inc.*, 336 F.3d at 986).

The United States Court of Appeals for the Fourth Circuit has fully embraced the *T.B.*

Harms' three-part test for complaints asserting subject-matter jurisdiction under the Copyright Act. *See Arthur Young & Co. v. City of Richmond*, 895 F.2d 967, 970 (4th Cir. 1990) ("The fact that a complaint containing proper allegations of copyright infringement might not present difficult issues of federal law has no bearing on the fundamental question of whether the suit arises under the Copyright Act."). *See also Gibraltar, P.R., Inc. v. Otoki Grp., Inc.*, 104 F.3d 616, 619 (4th Cir. 1997) (adopting the *T.B. Harms* test to decide subject-matter jurisdiction for a trademark dispute under the Lanham Act); *Christopher v. Cavallo*, 662 F.2d 1082, 1083 (4th Cir. 1981) (applying a portion of the *T.B. Harms* test to find that a complaint properly asserted a claim under the Copyright Act). As mandated by the Fourth Circuit, in determining whether a case "arises under" the Copyright Act, the court is limited to "what necessarily appears in the plaintiff's statement of his own claim in the [complaint], unaided by anything alleged in anticipation or avoidance of defenses . . . ." *Arthur Young*, 895 F.2d at 969 (quoting *Franchise Tax Bd. v. Laborers Vacation Tr.*, 463 U.S. 1, 10 (1983)). *See also Cavallo*, 662 F.2d at 1083 ("Whether [subject-matter jurisdiction exists] is determined from the plaintiff's initial pleading." (citing *Louisville & Nashville R.R. Co. v. Mottley*, 211 U.S. 149, 152 (1908))). When state law is implicated in a copyright dispute, a federal court must remain mindful that subject-matter jurisdiction under the Copyright Act "is not lost merely because a contract ownership may be implicated" by a plaintiff's complaint. *Scandinavian Satellite Sys., AS v. Prime TV Ltd.*, 291 F.3d 839, 845 (D.C. Cir. 2002). In accordance with that basic principle, a federal court is not without subject-matter jurisdiction when "[o]wnership of [a] copyright . . . is . . . a threshold question." *Topolos v. Caldewey*, 698 F.2d 991, 994 (9th Cir. 1983). Nevertheless, an issue *does not* arise under the Copyright Act, which thereby deprives a federal court of its subject-matter jurisdiction, if copyright ownership or a question of state law "is the sole question presented for review." *Scholastic Entm't, Inc.*, 336 F.3d

at 988. *See also Vestron, Inc.*, 839 F.2d 1380; *Dolch v. United Cal. Bank*, 702 F.2d 178, 180 ("The federal courts have consistently dismissed complaints in *copyright cases that present only questions of contract law*, including those pertaining to the validity of the assignments." (emphasis added)).

III. DISCUSSION

A. Plaintiffs' Constitutional Standing and Ripeness Doctrine

i. Plaintiffs' Constitutional Standing

Although neither party briefed the issue of Plaintiffs' constitutional standing, the court must use its "independent obligation to satisfy [itself] of [its] jurisdiction." *United States v. Bullard*, 645 F.3d 237, 246 (4th Cir. 2011) (citing *Dan River, Inc. v. Unitex Ltd.*, 624 F.2d 1216, 1223 (4th Cir. 1980)). Even in the copyright context, for a party to have constitutional standing under Article III of the United States Constitution–an issue implicating whether a federal court has the power to entertain a case–he or she must show the following: (1) "a concrete, particularized, and actual injury in fact"; (2) "a causal connection between the injury and the conduct complained of"; and (3) "a favorable decision will likely redress that injury." *Ray Charles Found.*, 795 F.3d at 1116 (quoting *Defs. of Wildlife*, 504 U.S. at 560–61). *See also Bullard*, 645 F.3d at 246 ("Standing requires injury-in-fact, causation, and redressability." (citing *McBurney v. Cuccinelli*, 616 F.3d 393, 402 (4th Cir. 2010))). If Plaintiffs' Complaint does not confer standing, the court is compelled to dismiss it for lack of subject-matter jurisdiction. *See Warth*, 422 U.S. at 501–02.

As here, where a party seeks declaratory or injunctive relief, he or she "must [first] establish an ongoing or future injury in fact." *Kenny v. Wilson*, 885 F.3d 280, 287–88 (4th Cir. 2018) (citing *O'Shea v. Littleton*, 414 U.S. 488, 495–96 (1974)). "To establish injury in fact, a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and

particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo, Inc.*, 136 S. Ct. at 1548 (quoting *Defs. of Wildlife*, 504 U.S. at 560). Precedent from the Supreme Court "has repeatedly recognized that financial or economic interests are 'legally protected interests' for purposes of standing doctrine." *Cottrell v. Alcon Labs.*, 874 F.3d 154, 164 (3d Cir. 2017) (citing *Vt. Agency of Nat. Res. v. United States*, 529 U.S. 765, 772–77 (2000); *Clinton v. New York*, 524 U.S. 417, 432 (1998); *Sierra Club v. Morton*, 4058 U.S. 727, 733–34 (1972)). *See also Air Evac EMS, Inc. v. Cheatham*, 910 F.3d 751, 760 (4th Cir. 2018) ("Since 'financial harm is a classic and paradigmatic form of injury in fact,' there is not dispute here that Air Evac's alleged loss of payment satisfies the first requirement." (quoting *Cottrell*, 874, F.3d at 163)). Solely examining the allegations within Plaintiffs' Complaint, Plaintiffs allege that Defendants have "agreed to assist one another in a joint scheme to circumvent Plaintiffs' termination interests and to convert all or part of Plaintiffs' *share of the proceeds* from [James Brown's] [c]ompositions." (ECF No. 1 at 18 ¶ 63 (emphasis added).) Plaintiffs also contend that they have "valuable copyright interests in the [c]ompositions[] and [] state common-law rights to an allocate[d] share of the proceeds derived therefrom." (*Id.* at 5 ¶ 13.) Based upon those allegations, Plaintiffs have identified their "legally protected interests" as (1) statutory termination rights granted by the Copyright Act and (2) financial proceeds flowing from their proportionate ownership of copyright interests under state law, both of which are sufficient to confer a valid legal interest for constitutional standing. *See Cottrell*, 974 F.3d 164 ("Both federal law and state law–including state statutes–'can create interests that support standing in federal courts.'" (quoting *Cantrell v. City of Long Beach*, 241 F.3d 674, 684 (9th Cir. 2001))). Additionally, Plaintiffs have alleged financial and statutory injuries that are "concrete and particularized" because their Complaint establishes that they have a legal right to both termination interests and copyright proceeds, as they are legal heirs to James

Brown under the Copyright Act and by virtue of participating in the state court probate action. (*See* ECF No. 1 at 12, 16, 18, 23, 27–28, 30 ¶¶ 47, 58, 65, 84, 97, 102, 109.) Lastly, Plaintiffs' claims are "actual" and "imminent" because their Complaint alleges that Defendants *have already* engaged in unlawful agreements under the Copyright Act and Defendant Hynie has already engaged in statutory terminations, which may have deprived them of proceeds. (*See id.* at 18–22 ¶¶ 66–77.) *See also Cottrell*, 874 F.3d at 168 (holding that an injury was actual and imminent when the "claimed financial harm . . . *already* occurred"). Moreover, of particular relevance, the court "may consider evidence outside the pleadings without converting the proceeding to one for summary judgment." *Richmond, Fredericksburg & Potomac*, 945 F.2d at 768. Here, the court observes that during the multiple hearings on the pending Motions to Dismiss, Defendants have never denied the existence of these alleged secret agreements, which directly undermines any argument that Plaintiffs' claims are "conjectural or hypothetical." (ECF Nos. 144, 180.) Accordingly, Plaintiffs' Complaint firmly establishes an injury-in-fact for purposes of constitutional standing. *See Ray Charles Found.*, 795 F.3d at 1116 (holding that a private foundation possessed an injury-in-fact for purposes of constitutional standing).

As to traceability and redressability, those elements have also been met for purposes of constitutional standing. *Bullard*, 645 F.3d at 246. To show traceability, a party must demonstrate that "a particular defendant's [actions] has affected *or has the potential to affect his interests*." *Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149, 161 (4th Cir. 2000) (emphasis added) (citations omitted). Plaintiffs' Complaint satisfies traceability because it expressly states that Defendants engaged in their alleged secret agreements in concert, statutory terminations have already occurred, and these specific Defendants have deprived them of their entitlement to an income stream. *See Ray Charles Found.*, 795 F.3d at 1116 (holding that a private

foundation's complaint satisfied traceability when it traced its financial injury to the statutory heirs terminating copyright grants). As to redressability, "a plaintiff 'must show that it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.'" *Deal*, 911 F.3d at 189 (quoting *Sierra Club*, 899 F.3d at 284) (internal quotation marks omitted). Here, Plaintiffs have shown redressability because their Complaint requests a declaration invalidating the alleged secret agreements that impact their termination interests or any proceeds therefrom. (*See* ECF No. 1 at 21–22 ¶¶ 76–77.) Such a declaration would provide Plaintiffs with the proceeds of which they are, or were, deprived. Moreover, at multiple points within the Complaint, Plaintiffs request damages for financial harms that they have allegedly experienced, further demonstrating that a favorable decision will provide them with relief for a financial harm already and currently being suffered. (*See id.* at 23, 24, 25, 26–27 ¶¶ 82, 86–88, 91, 96.)

Plaintiffs' constitutional standing is strikingly similar to the constitutional standing conferred upon a private foundation founded by the late-singer Ray Charles. *See Ray Charles Found.*, 795 F.3d at 1116. In *Ray Charles Foundation*, the United States Court of Appeals for the Ninth Circuit held that Ray Charles' private foundation had constitutional standing when its complaint showed that it relied on royalties from copyright grants, the statutory heirs sought to terminate those copyright grants, thereby depriving the foundation of monetary funds, and a declaration would redress that financial deprivation. *Id.* Here, too, Plaintiffs allege they are entitled to proceeds from James Brown's copyright grants, they allege that they have been deprived of possible proceeds, and a declaration would return those proceeds to them and clarify the allocation of their termination rights. (*See* ECF No. 1.) For these reasons, Plaintiffs' Complaint provides them with standing under Article III of the United States Constitution because they possess an injury-in-fact, traceability, and redressability, and this court is not deprived of subject-matter jurisdiction.

See Ray Charles Found., 795 F.3d at 1116 (holding that a private foundation possessed constitutional standing to challenge statutory heirs seeking to terminate copyright grants).

ii. Ripeness Doctrine

Defendants essentially argue that this suit is not ripe because Plaintiffs are actively appealing Defendant Hynie's marital status to the South Carolina Supreme Court. (*See* ECF No. 80-1 at 29–31; ECF No. 81 at 18–19; ECF No. 85 at 6–12; ECF No. 101 at 10-11.) In opposition to Defendants, Plaintiffs emphasize that Defendants misconstrue the allegations contained within their Complaint, and assert that their claims currently exist irrespective of any decisions about Defendant Hynie's spousal status. (*See* ECF No. 96 at 17–20; ECF No. 97 at 23–29; ECF No. 98 at 12–19; ECF No. 111 at 22–28.)

"Ripeness is a question of subject[-]matter jurisdiction." *Sansotta*, 724 F.3d at 548 (quoting *Reahard v. Lee Cty.*, 978 F.2d 1212, 1213 (11th Cir. 1992)). In order to resolve Defendants' ripeness challenge, the court must "balance the fitness of the issues for judicial decision with the hardship to the parties of withholding court consideration." *Doe*, 713 F.3d at 758. "To be fit for judicial review, a controversy should be presented in a 'clean-cut and concrete form.'" *South Carolina*, 912 F.3d at 730 (quoting *Miller*, 462 F.3d at 319). "A claim is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Texas*, 523 U.S. at 300 (quoting *Thomas*, 473 U.S. at 580–81). Even when issues concerning termination rights are at play, the court may only review ripe questions that "do[] not require [the court] to engage in abstract inquiries about speculative injuries." *Ray Charles Found.*, 795 F.3d at 1117 (citation omitted).

Accepting the material allegations as true, the principal issues brought forth by Plaintiffs include claims alleging that Defendants have engaged in "agreement[s] to the contrary," violative

of the Copyright Act, and Defendants ignored some of the procedural mandates embodied within the Copyright Act's detailed termination provisions. (*See* ECF No. 1 at 18–22 ¶¶ 66–77.) Even though Defendant Hynie's spousal status is pending for review before the South Carolina Supreme Court, any determination about her marital status to James Brown will only impact what her termination interest is or is not, in relation to his other statutory heirs, under the Copyright Act's provisions. *See* 17 U.S.C. §§ 203(a)(1)(2), 304(c)(2). The South Carolina Supreme Court's decision will not impact or have any bearing about whether she or other Defendants *currently engaged* in a prohibited "agreement to the contrary" in violation of 17 U.S.C. §§ 203(a)(1)(2) and 304(c)(2), or if she or other Defendants *currently ignored* any of the Copyright Act's procedural delineations for the exercise of termination rights, the two principal allegations brought by Plaintiffs' Complaint. (*See* ECF No. 1 at 18–22 ¶¶ 66–77.) Taking as true that Defendants have indeed engaged in a secret agreement, examining the secret agreement to determine whether it complies with the applicable provisions of the Copyright Act *would not* require this court to engage in a "wholly speculative" inquiry. *See Gasner*, 103 F.3d at 361. Instead, the copyright issues raised in the Complaint are "purely legal" because they require a federal court to determine whether the secret agreement is an "agreement to the contrary" and if procedural prerequisites relating to termination rights were met. *Miller*, 462 F.3d at 319. In other words, resolving those issues are not dependent upon Defendant Hynie's spousal status, but rely upon what is actually contained within the "[c]oncealed [t]erms" of the secret agreement that Plaintiffs vigorously maintain exists–an agreement to which Defendants have not disavowed. Thus, this case is fit for judicial review because it is "presented in a 'clean-cut and concrete form.'" *South Carolina*, 912 F.3d at 730 (quoting *Miller*, 462 F.3d at 319).

In addition to determining whether the issues are fit for judicial resolution, the court must

also balance "the hardship to the parties of withholding court consideration" when deciding whether a suit is ripe. *Doe*, 713 F.3d at 758. In accessing hardship to the parties, this prong is "measured by the immediacy of the threat and the burden imposed on the petitioner who would be compelled to act under threat of enforcement of the challenged law." *Charter Fed. Sav. Bank v. Office of Thrift Supervision*, 976 F.2d 203, 208–09 (4th Cir. 1992) (citation omitted). *See also Lansdowne on the Potomac Homeowners Ass'n., Inc. v. OpenBand at Lansdowne, LLC*, 713 F.3d 187, 198–99 (4th Cir. 2013) (noting that the hardship prong considers immediacy of the threat to a plaintiff and the burden imposed on a plaintiff). Moreover, "[w]hen considering hardship, [the court] may consider the cost to the parties of delaying judicial review." *Miller*, 462 F.3d at 319 (citing *Fort Sumter Tours, Inc. v. Andrus*, 564 F.2d 1119, 1124 (4th Cir. 1977)). Applying those legal principles and viewing Plaintiffs' material allegations as true, Defendants have already terminated some compositions (ECF No. 1 at 14–16 ¶¶ 51–58), and, in responding to Defendants' ripeness argument, Plaintiffs recently contend that an investment firm is "actively soliciting major music publishers in Los Angeles and New York on behalf of Defendants, offering to assign or license the rights to the [c]ompositions at issue." (ECF No. 96 at 19; ECF No. 97 at 25; ECF No. 98 at 14; ECF No. 111 at 26.) Based upon those aforementioned allegations and in accordance with precedent, Plaintiffs have demonstrated an immediate harm, which may impact their copyright proceeds to which they may be entitled under state law, as Defendants are already engaging in actions as it relates to James Brown's compositions. *See Lansdowne*, 716 F.3d at 199 (holding that a hardship could not be "any more immediate" when claimants were "*presently* unable to avail themselves of the quality, price, and menu of channel advantages of a competing [cable] provider"); *Miller*, 462 F.3d at 321 (finding that the hardship prong was satisfied when the challenged action already caused "immediate harm to [] constitutionally protected rights").

Moreover, withholding judicial consideration would be substantial because "[e]ach day that passes without judicial resolution is another day" for Plaintiffs to go without copyright proceeds to which they are legally entitled, face uncertainty about whether Defendants are honoring the provisions of the Copyright Act, and is another day for them to face legal apprehension regarding the status of their statutory termination rights. *See Landsdowne*, 716 F.3d at 199 (holding that there was a substantial hardship when the absence of judicial resolution would deprive homeowners of "the opportunity to obtain [cable] service from a competitor"). For these reasons, there would be "hardship to the parties of withholding court consideration," which supports the ripeness of this action when balanced with the fitness of these issues. *Doe*, 713 F.3d at 758.

Lastly, the court is again guided by *Ray Charles Foundation*, where the Ninth Circuit held that a suit brought by a private foundation was constitutionally ripe for consideration. 795 F.3d at 1116–17. In *Ray Charles Foundation*, the Ninth Circuit found that the suit was ripe for adjudication because the complaint presented "questions regarding the nature of the underlying works, such as whether they were works made for hire, and if so, when their respective termination dates would be effective." *Id.* at 1117. In a statutory sense, those claims are similar to Plaintiffs' allegations because, the court is tasked with determining whether any secret agreement, which Plaintiffs claim exists here, complies with the termination provisions of the Copyright Act both procedurally and substantively. *See id.* Applying *Ray Charles Foundation* to this case, Plaintiffs' Complaint is constitutionally ripe. *See id.* Upon balancing the fitness of these issues with any hardship of withholding consideration, Defendants' Motions to Dismiss are denied under Federal Rule of Civil Procedure 12(b)(1) in regard to constitutional ripeness.

B. <u>Subject-Matter Jurisdiction Under the Copyright Act's Termination Provisions</u>

The parties vigorously dispute whether this court possesses subject-matter jurisdiction

under the Copyright Act. (*See* ECF Nos. 80-1, 81, 96, 97, 101, 111.) Plaintiffs argue that this court has subject-matter jurisdiction because their Complaint explicitly alleges that Defendants have violated a provision of the Copyright Act–one prohibiting Defendants from engaging in "any agreement to the contrary" relating to one's ability to terminate copyright grants–by entering into "undisclosed agreements" in contravention of that provision. (*See* ECF No. 96 at 11; ECF No. 97 at 13; ECF No. 111 at 16.) In addition, Plaintiffs contend that the Complaint confers subject-matter jurisdiction because they allege that Defendant Hynie and Defendant Brown have flouted the procedures embodied by the Copyright Act's termination provisions by "waiving, pre-assigning, or pre-encumbering [Defendants] Hynie/JBII's termination rights and interests, *prior to the date* such termination rights have been exercised and/or, as to those [c]ompositions where the termination right had been exercised, prior to the effective termination date when the copyright interests revert." (ECF No. 96 at 14 (emphasis added); ECF No. 97 at 15 (emphasis added); ECF No. 111 at 19 (emphasis added).) Defendants, on the other hand, assert that the court does not possess subject-matter jurisdiction because Plaintiffs do not ask for a remedy expressly granted by the Copyright Act. (*See* ECF No. 80-1 at 20; ECF No. 81 at 18; ECF No. 101 at 10.) In that same vein, without providing any legal authority or reasoning, Defendants submit that Plaintiffs' copyright allegations do not require any interpretation of the Copyright Act and federal principles do not control the disposition of the action. (*See* ECF No. 80-1 at 20; ECF No. 81 at 18; ECF No. 101 at 10.)

Under 28 U.S.C. § 1338(a), federal district courts "shall have original jurisdiction of any civil action arising under any Act of Congress relating to . . . copyrights . . . ." In order to determine whether Plaintiffs' action "arises under" the Copyright Act, and thereby provides this court with subject-matter jurisdiction, the court is limited to an examination of Plaintiffs' allegations

contained within the Complaint.[11] *See Arthur Young*, 895 F.2d at 969 (quoting *Franchise Tax Bd.*, 463 U.S. at 10). *See also Taylor v. Anderson*, 234 U.S. 74, 75–76 (1914) ("[I]t has become firmly settled that whether a case is one arising under the Constitution or a law or treaty of the United States, in the sense of the jurisdictional statute, must be determined from what necessarily appears in the plaintiff's statement of his own claim in the bill or declaration, unaided by anything alleged in anticipation or avoidance of defense which it is thought the defendant may interpose." (internal citation omitted) (citations omitted)); *Bassett v. Mashantucket Pequot Tribe*, 204 F.3d 343, 349 (2d Cir. 2000) ("The analysis under *T.B. Harms* turns on what is alleged *on the face of the complaint*, while the essence-of-the-dispute or merely-incidental test looks rather at what defense will be proffered." (emphasis added)). During this inquiry, Defendants' potential rebuttals to the suit are both irrelevant and immaterial because the court's analysis is "unaided" by any anticipated or possible defenses. *See Arthur Young*, 895 F.2d 969; *Bassett*, 204 F.3d at 349; *Cavallo*, 662 F.2d at 1083. The court is aware that "the division between jurisdiction in the federal courts, on the one hand, and jurisdiction in the courts of the various states, on the other, poses among the knottiest procedural problems in copyright jurisprudence." 3 MELVILLE B. NIMMER & DAVID NIMMER, NIMMER ON COPYRIGHT § 12.01[A], Lexis (database updated April 2019). However, in an attempt to resolve that problem, the Fourth Circuit handed down *Arthur Young* in 1991, and it adopted the jurisdictional analysis created and employed by *T.B. Harms*. 895 F.2d at 970. Therefore, for this court to exercise subject-matter jurisdiction under the Copyright Act, *T.B. Harms* requires this

[11] Even though Plaintiffs' Complaint seeks declaratory relief as it relates to their copyright claim, the well-pleaded complaint rule "operates no differently" in any other context, and Plaintiffs' Complaint must still present a federal question. *See Columbia Gas Transmission Corp. v. Drain*, 237 F.3d 366, 370 (4th Cir. 2001) ("The well-pleaded complaint rule operates no different when the jurisdictional issue is whether a district court possesses subject[-]matter jurisdiction of a declaratory judgment action purporting to raise a federal question." (citations omitted)).

court to decide whether Plaintiffs' Complaint does any of the following: (1) "[asks] for a remedy expressly granted by the Act, e.g., a suit for infringement or for the statutory royalties for record reproduction"; (2) "asserts a claim requiring construction of the Act"; or (3) "presents a case where a distinctive policy of the Act requires that federal principles control the disposition of the claim." 339 F.2d at 828. "If any of these grounds is satisfied, the federal courts have jurisdiction." *Vestron, Inc.*, 839 F.2d at 1381.

The ground for subject-matter jurisdiction under the Copyright Act and section 1338(a) is when the complaint "[asks] for a remedy expressly granted by the [Copyright] Act." *T.B. Harms*, 339 F.2d at 828. A federal district court clearly possesses subject-matter jurisdiction over copyright infringement claims because those matters seek explicit remedies provided by the Copyright Act at 17 U.S.C. §§ 502 to 513. *See MCA Television Ltd. v. Pub. Interest Corp.*, 171 F.3d 1265, 1269–70 (11th Cir. 1999) (holding that a suit seeking remedies for copyright infringement, under the Copyright Act, conferred subject-matter jurisdiction); *Arthur Young*, 895 F.2d at 971 (holding that a complaint requesting remedies for alleged copyright infringement sought remedies provided by the Copyright Act, and the district court improperly dismissed the complaint on subject-matter jurisdiction grounds); *Vestron, Inc.*, 839 F.2d at 1382 ("The complaint makes out an infringement claim and seeks remedies expressly created by federal copyright law."); *Topolos*, 698 F.2d at 994–95 (finding that a plaintiffs' allegations of copyright infringement were sufficient to confer subject-matter jurisdiction). In the instant case, Plaintiffs do not make any allegations concerning copyright infringement, nor do they seek any remedies under those statutory provisions. (*See* ECF No. 1 at 18–22 ¶¶ 66–77.) Instead, Plaintiffs' Complaint seeks a "declaration [from] [] this [c]ourt . . . under the Declaratory Judgment Act . . . to establish the parties' respective rights and obligations" in regard to statutory termination rights and both preliminary and permanent injunctions enjoining

Defendants from "entering into or performing any agreement which directly or indirectly settles, waives, conveys[,] or encumbers the termination rights and interests with respect to the [c]ompositions . . . ." (*Id.* at 21–22 ¶¶ 76–77.) Similarly, within their prayer for relief, Plaintiffs reiterate that they desire a "declaration" that Defendants' secret agreements are "void, unenforceable[,] and prohibited as a matter of law and public policy under [s]ections 304(c) and 203(a) of the Copyright Act" and also request, respectively, preliminary and permanent injunctions. (*Id.* at 31–32.) First, as it relates to Plaintiffs' request for declaratory relief, that remedy is exclusively governed by the Declaratory Judgment Act, and Plaintiffs exclusively moved under its provisions, and not any of the Copyright Act, for a declaration with respect to their rights. (*See id.* at 21 ¶ 76.) However, the Declaratory Judgment Act does not confer subject-matter jurisdiction upon federal courts, and Plaintiffs are precluded from using it to establish the court's subject-matter jurisdiction regarding this dispute. *See CGM, LLC v. BellSouth Telecomms., Inc.*, 664 F.3d 46, 55 (4th Cir. 2011) ("[The Declaratory Judgment Act], however, is remedial only and neither extends federal courts' jurisdiction nor creates any substantive rights." (citing *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671–72 (1950); *Volvo GM Heavy Truck Corp. v. U.S. Dep't of Labor*, 118 F.3d 205, 210 (4th Cir. 1997))). *See also Lotz Realty Co., Inc. v. U.S. Dep't of Hous. & Urban Dev.*, 717 F.2d 929, 932 (4th Cir. 1983) ("Jurisdiction, however, cannot be rested on the Declaratory Judgment Act." (citations omitted)). In addition, the statutory provisions of the Copyright Act provide no declaratory remedies, pertaining to statutory termination rights, for unlawful "agreement[s] to the contrary." *See* 17 U.S.C. §§ 203, 304(c), 502–513. Plaintiffs' request for declaratory relief does not "[ask] for a remedy expressly granted by the [Copyright] Act" and fails to confer subject-matter jurisdiction. *T.B. Harms*, 339 F.2d at 828. Secondly, turning to Plaintiffs' prayer for injunctive relief, the Copyright Act only provides "temporary and final

injunctions . . . to prevent or restrain infringement of a copyright." 17 U.S.C. § 502(a). Noticeably, the Copyright Act does not explicitly provide any injunctive remedies against parties engaging in "agreement[s] to the contrary," which allegedly contravene the termination provisions of the Copyright Act. *See id.* §§ 203, 304(c), 502–513. Accordingly, Plaintiffs' injunctive remedies likewise do not "[ask] for a remedy expressly granted by the [Copyright] Act." *T.B. Harms*, 339 F.2d at 828. For these reasons, at least as it initially relates to the first prong of *T.B. Harms*, the court does not possess subject-matter jurisdiction under 28 U.S.C. § 1338(a) because Plaintiffs' Complaint does not seek any express remedies provided by the Copyright Act, as their requests for declaratory and injunctive relief are not statutorily embodied within the Act. *See T.B. Harms*, 339 F.2d at 828.

Even though the court does not possess subject-matter jurisdiction under the Copyright Act under the first prong of *T.B. Harms*, the court must still determine whether Plaintiffs' Complaint requires a construction of the Copyright Act or distinctive federal policies control the disposition of the action. *See T.B. Harms*, 339 F.2d at 828. *See also* 3 MELVILLE B. NIMMER & DAVID NIMMER, NIMMER ON COPYRIGHT § 12.01[A][1][*b*]–[*c*], Lexis (database updated April 2019). Only examining the face of Plaintiffs' Complaint and unaided by any of Defendants' possible defenses, Plaintiffs allege, verbatim, that Defendants engaged in "*improper agreements* convert[ing] Plaintiffs' share of the financial proceeds from their termination interests in the [c]ompositions, encumbering, diluting and/or effectively destroying Plaintiffs' termination interests." (ECF No. 1 at 19–20 ¶ 72 (emphasis added).) Building upon the improper agreements that they believe exist, Plaintiffs allege that Defendant Hynie's "*aforementioned agreements* are void *ab initio* and unenforceable as they directly or indirectly settle, waive, hypothecate and/or encumber the termination rights and interests *in violation of the comprehensive prohibitions of 17 U.S.C. §§*

304(c)(5) or 203(a)(5), respectively." (*Id.* at 20 ¶ 73 (emphasis in original) (emphasis added).) Adding to those allegations, Plaintiffs' Complaint further contends that "Hynie's disclosed agreement to transfer to the Trust the majority of proceeds from the termination interests (inclusive of the 2013 Hynie Terminations) or Concealed Terms to transfer the copyright interests to be recaptured via notices of termination (inclusive of the 2013 Hynie Terminations) prior to the effective dates thereof, *violates both prongs of 17 U.S.C. §§ 304(c)(6)(D) or 203(b)(4) . . . .*" (*Id.* at 20–21 ¶¶ 75 (emphasis added).)

Based upon the express allegations above, the court possesses subject-matter jurisdiction under the Copyright Act and 28 U.S.C. § 1338(a) because those claims "require[e] construction of the [Copyright] Act." *See T.B. Harms*, 339 F.2d at 828. The Copyright Act expressly permits the exercise of termination rights "*notwithstanding any agreement to the contrary*." 17 U.S.C. §§ 203(a)(5), 304(c)(5). The plain language of Plaintiffs' Complaint contends that Defendants' "improper agreements" violate 17 U.S.C. §§ 203(a)(5) and 304(c)(5) because they are "agreement[s] to the contrary" that "encumber [] termination rights." (ECF No. 1 at 20 ¶ 73.) Plaintiffs' claims necessarily require a federal court to determine how and why Defendants' alleged agreements are unlawful "agreement[s] to the contrary" that are void under the express provisions of the Copyright Act. *See* 17 U.S.C. §§ 203(a)(5), 304(c)(5). In order for the court to engage in that task, it is inevitable that a "construction of the [Copyright Act]" is required, as the Copyright Act's language provides the standard upon which to evaluate the alleged secret agreements. *See T.B. Harms*, 339 F.2d at 828. Further, Plaintiffs' Complaint submits that Defendants violated additional procedural violations by assigning copyright interests *prior to the effective dates* that such alleged terminations have occurred. (ECF No. 1 at 20–21 ¶¶ 75.) Such an allegation also requires a federal court to engage in the "construction of the [Copyright] Act" by

examining whether Defendants complied with the explicit procedural mandates and mechanisms provided by the Act. *See* 17 U.S.C. §§ 203(b)(4), 304(c)(6)(D). Though they have not identified a specific prong under *T.B. Harms*, lower federal courts have exercised subject-matter jurisdiction, without reversal on that ground, when similar claims have been alleged. *See Baldwin v. EMI Feist Catalog, Inc.*, 989 F. Supp. 2d 344, 346 (S.D.N.Y. 2013), *rev'd on other grounds*, 805 F.3d 18 (2d Cir. 2015); *Marvel Characters*, *Inc. v. Simon*, No. 00 CIV. 1393(RCC), 2002 WL 313865, at *1 (S.D.N.Y. Feb. 27, 2002), *rev'd on other grounds*, 310 F.3d 280 (2d Cir. 2002). *See also Century of Progress Prods. v. Vivendi S.A.*, No. CV 16-7733 DMG (ASx), 2018 WL 4191340, at *1 n.1 (C.D. Cal. Aug. 28, 2018); *Music Sales Corp. v. Morris*, 73 F. Supp. 2d 364, 366 (S.D.N.Y. 1999) ("This [c]ourt has federal question jurisdiction over this dispute because the issues presented arise under the Federal Copyright Act, 17 U.S.C. § 304."). Additionally, even though they did not make explicit subject-matter jurisdiction determinations pursuant to *T.B. Harms*, a number of appellate court decisions have necessarily assumed subject-matter jurisdiction when plaintiffs brought claims seeking review of the exercise of statutory termination rights. *See Baldwin v. EMI Feist Catalog, Inc.*, 805 F.3d 18, 31–34 (2d Cir. 2015); *Penguin Grp.*, 537 F.3d at 202–04; *Classic Media, Inc. v. Mewborn*, 532 F.3d 978, 990 (9th Cir. 2008); *Milne ex rel. Coyne v. Stephen Slesinger, Inc.*, 430 F.3d 1036, 1043–48 (9th Cir. 2005); *Marvel Characters, Inc.*, 310 F.3d at 292.

Similar to the claims here, in those aforementioned cases, the plaintiffs either alleged statutory violations of the procedural prerequisites for the exercise of termination rights or the existence of unlawful "agreement[s] to the contrary" that limited the ability to terminate prior copyright grants. *See Baldwin*, 805 F.3d at 31–34 (assuming subject-matter jurisdiction in order to determine the proper date of a statutory termination under 17 U.S.C. § 203 when there were two different termination notices); *Penguin Grp.*, 537 F.3d at 202–04 (holding, in the absence of any

copyright infringement claim, that an agreement was not an "agreement to the contrary" in violation of 17 U.S.C. § 304(c)(5)); *Classic Media, Inc.*, 532 F.3d at 990 (assuming subject-matter jurisdiction to hold that the daughter of a deceased author did not relinquish her termination right and that she effectively exercised her termination right); *Miline ex rel. Coyne*, 430 F.3d at 1043–48 (holding that a party did not engage in an "agreement to the contrary," and the court could not disregard the agreement); *Marvel Characters, Inc.*, 310 F.3d at 292 (assuming subject-matter jurisdiction when holding that an "agreement made subsequent to a work's creation which retroactively deems it a 'work for hire' constitutes an 'agreement to the contrary' under 304(c)(5) of the 1976 Act"). The court possesses subject-matter jurisdiction over this action because Plaintiffs' Complaint "asserts [] claim[s] requiring construction of the Act" by specifically alleging that Defendants' secret agreements are "agreement[s] to the contrary," in violation of 17 U.S.C. §§ 203(a)(5) and 304(c)(5), and maintaining Defendants have flouted the procedural requirements for the valid exercise of statutory termination rights. *See T.B. Harms*, 339 F.2d at 828.

Defendants vigorously assert that Plaintiffs' copyright allegations are actually claims rooted in state law. (*See* ECF No. 80-1 at 18; ECF No. 81 at 16; ECF No. 101 at 8.) Defendants' argument patently ignores the express allegations contained within Plaintiffs' Complaint. Defendants misplace their reliance upon appellate decisions dismissing complaints for lack of subject-matter jurisdiction when the complaints sought to adjudicate *the ownership of a copyright* or *invalidate an agreement on state law grounds*, including for insufficient consideration, fraud, or an invalid assignment, neither of which had implications for the Copyright Act. *See Scholastic Entm't, Inc.*, 336 F.3d at 988 (holding that subject-matter jurisdiction was absent when, based upon the termination of a contract, copyright ownership was the "sole question" presented for judicial review, it was impossible for the defendant to engage in copyright infringement to confer

jurisdiction, and the state laws of California, due to a contractual dispute, governed a separate determination involving whether a party retained the right to terminate a copyright license of indefinite duration); *Dolch*, 702 F.2d at 180–81 (holding that there was no subject-matter jurisdiction under the Copyright Act because a claim only sought to overturn a contractual assignment of copyright renewal rights, a theory resting "entirely on state law," and the Copyright Act did not govern the conditions of a valid assignment).

In stark contrast to the cases upon which Defendants rely, Plaintiffs' Complaint does not seek to invalidate any alleged secret agreement based upon a theory premised on state law. (*See* ECF No. 1 at 18–22 ¶¶ 66–77.) Plaintiffs' Complaint alleges that those secret agreements are "agreement[s] to the contrary" in contravention of 17 U.S.C. §§ 203(a)(5) and 304(c)(5), not "agreement[s] to the contrary" for lacking a necessary condition in contract law. (*See id.*) Indeed, Plaintiffs never allege that Defendants' purported agreements are void for failing to satisfy state law requirements, they allege that Defendants' secret agreements contravene the explicit provisions of the Copyright Act by impacting termination rights or ignoring the various procedural requirements embodied within the Act. (*See id.*) Plaintiffs are the master of their Complaint, not Defendants, and Defendants cannot include novel legal theories about the alleged secret agreements that are noticeably absent from Plaintiffs' Complaint. *See Scimone v. Carnival Corp.*, 720 F.3d 876, 882 (11th Cir. 2013) ("[P]laintiffs are 'the master of the complaint' and are 'free to avoid federal jurisdiction,' by structuring their case to fall short of a requirement of federal jurisdiction." (internal citation omitted) (quoting *Hill v. BellSouth Telecomms., Inc.*, 364 F.3d 1308, 1314 (11th Cir. 2004))). Accordingly, the court finds Defendants' reliance upon *Dolch* and *Scholastic* legally misplaced, and their attempt to recharacterize the plain language of Plaintiffs' Complaint, which specifically alleges violations of the Copyright Act's statutory provisions, is in

contravention of well-established law.

In sum, the court possesses subject-matter jurisdiction under 28 U.S.C. § 1338(a) and the Copyright Act because Plaintiffs' Complaint expressly alleges that Defendants have engaged in "agreement[s] to the contrary" which are prohibited under 17 U.S.C. §§ 203(a)(5) and 304(c)(5), and such an allegation "asserts a claim" requiring the construction of the Copyright Act as the court must decide whether Defendants' secret agreements are actually "agreement[s] to the contrary" forbidden by the Copyright Act. (*See* ECF No. 1 at 20 ¶ 73.) Plaintiffs also allege that Defendants have ignored procedural requirements embodied within the Copyright Act, which further requires the court to engage in a construction of the Copyright Act. (*See id.* at 20–21 ¶¶ 74–75 (citing 17 U.S.C. §§ 304(c)(6)(D), 203(b)(4)).) Both of these constructions of the Copyright Act are sufficient to confer jurisdiction upon the court as they fall under the second prong of the *T.B. Harms* analysis. *See Vestron, Inc.*, 839 F.2d at 1381. The court declines to forego the exercise of subject-matter jurisdiction when it has been sufficiently invoked by Plaintiffs. *See Mata v. Lynch*, 135 S. Ct. 2150, 2156 (2015) ("And when a federal court has jurisdiction, it also has a 'virtually unflagging obligation . . . to exercise' that authority." (quoting *Colorado River Water Conservation Dist. v. United States*, 515 U.S. 277, 817 (1976)). As such, Defendants Bauknight, Brown, and Hynie's Motions to Dismiss are denied under Federal Rule of Civil Procedure 12(b)(1) as it pertains to the court's subject-matter jurisdiction under the Copyright Act.

C. <u>Defendant Bauknight's Challenge to Personal Jurisdiction</u>

Defendant Bauknight moves pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure for the dismissal of the Complaint. (ECF No. 80-1 at 23–29.) Within his Motion to Dismiss, Defendant Bauknight contends that Plaintiffs' Complaint must be dismissed because the

court lacks personal jurisdiction over him and the estate.[12] (*See id.* at 20–29.) Confusingly, in arguing that the court lacks personal jurisdiction to exercise authority over him and the estate, Defendant Bauknight admits that "[a]t all relevant times, [he] and the Estate and Trust have been domiciled and citizens of the State of South Carolina." (*Id.* at 23.) Additionally, his Motion explicitly emphasizes that "there is no doubt all actions, agreements, and other matters complained of, took place in South Carolina." (*Id.* at 24 (emphasis in original).)

A federal court is required to have personal jurisdiction under the Due Process Clause of the Constitution. *See Foster v. Arletty 3 Sarl*, 278 F.3d 409, 413 (4th Cir. 2002) (citing *Ins. Corp. of Ir., Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982)). There are usually two types of personal jurisdiction which a federal court may exercise that are consistent with the Due Process Clause: general jurisdiction and specific jurisdiction. *See Sneha Media & Entm't, LLC v. Associated Broad. Co. P. Ltd.*, 911 F.3d 192, 198 (4th Cir. 2018) (citations omitted); *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 624 (2d Cir. 2016); *Nichols v. G.D. Searle & Co.*, 991 F.2d 1195, 1199 & n.2 (4th Cir. 1993) (citations omitted). "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile . . . ." *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014) (citation omitted). *See also Milliken v. Meyer*, 311 U.S. 457, 463–64 (1940). "[A] domicile is an individual's place of residence where he intends to remain permanently or indefinitely and to which he intends to return whenever he is away." *Hollowell v. Hux*, 229 F.

[12] As stated earlier, this action was transferred to this court from the United States District Court for the Central District Court of California on August 7, 2018, and Defendant Bauknight's Motion to Dismiss was filed in this court on September 10, 2018. (*See* ECF Nos. 74, 80-1.) Perplexingly, Defendant Bauknight seems to challenge whether personal jurisdiction could have been exercised by the United States District Court for the Central District of California, and not the United States District Court for the District of South Carolina. (*See* ECF No. 80-1 at 20–29.) During oral argument, Defendant Bauknight never challenged this court's exercise of personal jurisdiction and seems to have possibly abandoned this ground. (*See* ECF No. 180.)

Supp. 50, 52 (E.D.N.C. 1964). *See also Kanter v. Waner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) ("A person's domicile is her permanent home, where she resides with the intention to remain or to which she intends to return."). Lastly, unless personal jurisdiction is challenged in a pre-answer motion or in the answer itself, it is deemed waived. FED. R. CIV. P. 12(h). *See also Bethlehem Steel Corp. v. Devers*, 389 F.2d 44, 45–46 (4th Cir. 1968) ("Since the appearance must be deemed authorized and since no attack on personal jurisdiction was made in a pre-answer motion or in the answer itself, the defense of lack of jurisdiction over the person is waived." (citation omitted)).

As an initial matter, Plaintiffs' Complaint does not seek relief from the estate itself, but only names Defendant Bauknight "as the personal representative" of James Brown's estate and trust. (*See* ECF No. 1 at 1.) Therefore, the court is concerned only with whether it may exercise personal jurisdiction over Defendant Bauknight and is not compelled to a make a personal jurisdiction finding as to James Brown's estate and trust. (*See id.*) Here, Defendant Bauknight states that he is a "resident and citizen of Richland County, South Carolina." (ECF No. 80-2 at 3 ¶ 1.) Additionally, Defendant Bauknight expressly states that "[a]t all relevant times, [he] and the [e]state and [t]rust have been domiciled and citizens of the State of South Carolina." (ECF No. 80-1 at 23.) Defendant Bauknight's concessions expressly indicate that he is both domiciled and resides in South Carolina, evidencing an intent on his part to claim South Carolina as his home and full-time residence. (*See id.*; ECF No. 80-2 at 3 ¶ 1.) Moreover, he claims he is a South Carolina citizen. (ECF No. 80-1 at 23.) Accordingly, mainly due to these concessions, this court possesses personal jurisdiction, in the form of general jurisdiction, over Defendant Bauknight that plainly comports with the Due Process Clause of the Constitution because he is domiciled in South Carolina. *See Daimler AG*, 571 U.S. at 137. Defendant Bauknight's challenge to the court's

exercise of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2) is denied and without any factual merit.

D. Defendants Bauknight and Sojourner's Call for the Probate Exception

Defendants Bauknight and Sojourner both argue that the court should apply the "probate exception" to the exercise of the court's jurisdiction because Plaintiffs are "specifically seeking an order from this [c]ourt concerning property (copyright and termination rights) that are being dealt with in the South Carolina probate and appellate courts . . . ." (*See* ECF No. 80-1 at 11; ECF No. 85 at 13.) Defendant Sojourner specifically contends that Plaintiffs' accounting claim falls within the confines of the probate exception because that claim "seeks an order regarding the 'administration of the estate.'" (ECF No. 85 at 13.) In response, Plaintiffs vigorously argue that the termination interests, and proceeds therefrom, "pass exclusively under the Copyright Act, not by testamentary or intestate succession and are therefore not the subject of any probate proceeding." (ECF No. 98 at 20–22.)

Affirming prior legal precedent, in 2012, the Supreme Court formally recognized a probate exception to a federal court's subject-matter jurisdiction. *See Marshall v. Marshall*, 547 U.S. 293, 310–12 (2006). "The 'probate exception' to federal jurisdiction is a judicially created, 'longstanding limitation [] on federal jurisdiction' that has historical, rather than constitutional, roots." *Capponi v. Murphy*, 772 F. Supp. 2d 457, 465 (S.D.N.Y. 2009) (citing *Marshall*, 547 U.S. at 298). The probate exception should not be given a "sweeping extension," but should only receive a narrow construction. *Marshall*, 547 U.S. at 305, 307, 310–12. Generally, the probate exception applies when a "federal court would have to assert control over property that remains under the control of the state courts." *Lefkowitz v. Bank of N.Y.*, 528 F.3d 102, 107 (2d Cir. 2007). In *Marshall*, the Supreme Court set out an explicit test to determine whether the probate exception is

applicable and it is as follows:

> [T]he probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court. But it does not bar federal courts from adjudicating matters outside of those confines and otherwise within federal jurisdiction.

547 U.S. at 311–12. The Fourth Circuit has opined that the probate exception is limited to when either (1) a federal district court is "require[d] . . . to probate or annul a will or administer a decedent's estate" or (2) the court is required "to dispose of property in the custody of a state probate court." *Lee Graham Shopping Ctr., LLC v. Estate of Diane Z. Kirsch*, 777 F.3d 678, 681 (4th Cir. 2015). "A case does not fall under the probate exception if it merely impacts a state court's performance of one of these tasks." *Id.*

In the case at hand, the probate exception to the court's subject-matter jurisdiction does not apply, and Defendants seek to enlarge an otherwise "narrow" doctrine. *Marshall*, 547 U.S. at 305, 307. As stated above, and in accordance with *Marshall*, the probate exception to a federal court's subject-matter jurisdiction only applies when a federal court is either (1) "require[d] . . . to probate or annul a will or administer a decedent's estate" or (2) "dispose of property in the custody of a state probate court." *Lee Graham Shopping Ctr.*, 777 F.3d at 681. *See also Marshall*, 547 U.S. at 311–12. Upon review of Plaintiffs' Complaint, turning to the first prong, there is no request for the court to either "probate or annul a will or administer" James Brown's estate. (*See* ECF No. 1 at 1–35.) The court need not accept Defendants Bauknight and Sojourner's conclusory beliefs that Plaintiffs seek this court to act otherwise. *See Moser v. Pollin*, 294 F.3d 335, 340 (2d Cir. 2002) ("Of course, since few practitioners would be so misdirected as to seek, for example, letters testamentary or letters of administration from a federal judge, the first prong of the probate exception is rarely, if ever, violated."); *Marcus v. Quattrocchi*, 715 F. Supp. 2d 524, 532 (S.D.N.Y.

2010) ("Despite this conclusory statement, nothing about Plaintiffs' claims actually asks the [c]ourt to 'probate or annul a will' or 'administer a decedent's estate.'" (citations omitted)). Thus, the first prong of the probate exception has not been met as it is not implicated by Plaintiffs' Complaint or the claims therein.

Nevertheless, the probate exception may still apply if the court is compelled to "dispose of property in the custody of a state probate court." *Lee Graham Shopping Ctr.*, 777 F.3d at 681. Put differently, the probate exception will apply if a federal court must "assume *in rem* jurisdiction over property that is in the custody of the probate court . . . ."[13] *Three Keys Ltd. v. SR Util. Holding Co.*, 540 F.3d 220, 227 (3d Cir. 2008) (emphasis in original). Federal courts have typically

[13] The United States Court of Appeals for the Fourth Circuit has held that the probate exception to federal jurisdiction may apply to a federal court exercising its diversity jurisdiction. *See Lee Graham Shopping Ctr., LLC v. Estate of Diane Z. Kirsch*, 777 F.3d 678, 680 (4th Cir. 2015). The Fourth Circuit has not determined whether the probate exception applies when federal courts are exercising federal-question jurisdiction. The federal appellate courts are divided as to whether the probate exception may apply in a case utilizing federal-question jurisdiction. *Compare Kowalski v. Boliker*, 893 F.3d 987, 995 (7th Cir. 2018) ("These exceptions apply to both federal-question and diversity suits."), *with In re Goerg*, 844 F.2d 1562, 1565 (11th Cir. 1988) ("That exception relates only to 28 U.S.C. § 1332 (1982), and has no bearing on federal[-]question jurisdiction, the jurisdiction invoked in bankruptcy cases."). Adding to this treacherous landscape, in *Marshall v. Marshall*, the United States Supreme Court explicitly declined to declare whether an uncodified probate exception even exists to a federal court's federal-question jurisdiction under a federal bankruptcy statute. 547 U.S. 293, 308–09 (2006) ("Vickie Marshall's claim falls far outside the bounds of the probate exception described in *Markham*. We therefore need not consider in this case whether there exists any uncodified probate exception to federal bankruptcy jurisdiction under § 1334."). Nevertheless, both before and after *Marshall*, numerous federal courts have applied an uncodified probate exception to cases utilizing federal-question jurisdiction under federal statutes. *See Tonti v. Petropoulous*, 656 F.2d 212, 215 (6th Cir. 1981) (addressing the probate exception in a case involving 42 U.S.C. § 1983); *In re Boisseau*, C/A No. 5:16-CV-0549 (LEK/ATB), 2017 WL 395124, at *3 (N.D.N.Y Jan. 30, 2017) ("[T]he probate exception applies to cases arising out of both federal question and diversity jurisdiction."). In this case, the court has determined that it possesses federal-question jurisdiction under 28 U.S.C. § 1338(a), and for the sole purpose of deciding the applicability of the exception, the court will assume that such an uncodified exception exists under 28 U.S.C. § 1338(a), the court's source of federal-question jurisdiction. *See supra* Part III.B. Regardless, the court is unconcerned about whether an uncodified exception exists because Plaintiffs' claims are beyond any constraints of the probate exception.

examined the application of the probate exception claim by claim. *See Chevalier v. Estate of Barnhart*, 803 F.3d 789, 801–02 (6th Cir. 2015). Crucial to this analysis is whether a claim is an *in personam* or *in rem* action. *Id.* at 801. This distinction is important because the probate exception "does not prevent a court from disgorging the profits that a defendant obtains through his wrongful possession of such property." *Osborn v. Griffin*, 865 F.3d 417, 436 (6th Cir. 2017). Generally, an *in personam* action is "brought against a person rather than property" and it often involves a determination about the "personal rights and obligations of the parties." *In Personam*, BLACK'S LAW DICTIONARY (10th ed. 2014). In such a case, "the judgment 'is binding on the judgment-debtor and can be enforced against all the property of the judgment-debtor.'" *Chevalier*, 803 F.3d at 801–02 (citation omitted). Contrastingly, an *in rem* action concerns the "rights of persons generally with respect to [] [property]." *In Rem*, BLACK'S LAW DICTIONARY (10th ed. 2014). In rem actions 'are fights over a property or a person in the court's control.'" *Chevalier*, 803 F.3d at 802 (quoting *Struck v. Cook Cty. Pub. Guardian*, 508 F.3d 858, 860 (7th Cir. 2007)). "The property within the control of the court is the *res*." *Id.* (emphasis added). Again, the court must be mindful that "[a] federal court cannot exercise *in rem* jurisdiction over a *res* in the custody of another court." *Curtis v. Brunsting*, 704 F.3d 406, 409 (5th Cir. 2013).

First, construing the probate exception narrowly, Plaintiffs' claim under the Copyright Act does not request the court to exercise control over any *res* currently in the custody of the probate court. That claim requests the court to determine whether Defendants have engaged in an "agreement to the contrary" violative of the Copyright Act's provisions and whether the Act's procedural requirements were met. (*See* ECF No. 1 at 18–22 ¶¶ 66–77.) In and of itself, that claim does not implicate any "dispos[al] of property in the custody of a state probate court," but rather involves the "personal rights and obligations of the parties." *See Lee Graham Shopping Ctr.*, 777

F.3d at 681.

As to Plaintiffs' accounting claim, federal courts have routinely held that an accounting claim implicating a trust does not fall within the bounds of the probate exception because it is a form of equitable relief that does not require the disposal of any *res* held by a probate court, but is rather an *in personam* claim against an individual. *See Wisecarver v. Moore*, 489 F.3d 747, 751 (6th Cir. 2007) ("[T]he principles underlying the probate exception are not implicated when federal courts exercise jurisdiction over claims seeking *in personam* jurisdiction based upon tort liability because the claims do not interfere with the rest in the state court probate proceedings . . . ."); *Singer v. Mass. Mut. Life Ins. Co.*, 335 F. Supp. 3d 1023, 1030 n.4 (N.D. Ill. 2018) ("The request for trust accounting does not implicate the probate exception either." (citing *Downey v. Keltz*, No. 11-CV-1323, 2012 WL 280716, at *3 (N.D. Ill. Jan. 31, 2012))); *Wolfram v. Wolfram*, 78 F. Supp. 3d 758, 767 (N.D. Ill. 2015) ("Since fiduciary-breach claims are safe from the probate exception, so too are accounting claims." (citing *Downey*, 2012 WL 280716, at *3)); *Marcus*, 715 F. Supp. 2d at 534 (holding that an accounting claim did not fall within the probate exception because it is "not a form of relief that only a probate court can administer or that requires interference with any *res* under the jurisdiction of a probate court"); *Tartak v. Del Palacio*, C/A No. 09–1730 (DRD), 2010 WL 3960572, at *11 (D.P.R. Sept. 30, 2010). Accordingly, Plaintiffs' copyright and accounting claims are outside the reach of the probate exception to federal jurisdiction.

In addition to an accounting claim, Plaintiffs bring the following tort claims premised in state law: (1) conversion; (2) unjust enrichment; (3) intentional interference with prospective economic advantage; (4) negligent interference with prospective economic advantage; and (5) common law unfair competition. (ECF No. 1 at 23, 25, 27–28, 30 ¶¶ 84, 90–91, 97, 102, 109.) As to Plaintiffs' conversion and unjust enrichment claims, those claims are *in personam* claims, as

state law torts, because they specifically target the individual conduct of Defendants by suggesting that they have divided copyright proceeds among themselves. (*See id.* at 23–25 ¶¶ 84–87, 90–91.) The Complaint does not seek any disgorgement from the estate for these two claims, but from Defendants themselves. (*See id.*) In the aftermath of *Marshall*, federal courts have routinely found that conversion and unjust enrichment claims, similar to those here, are typically *in personam* actions outside the scope of the probate exception as they seek monetary damages against individual defendants personally. *See Capponi v. Murphy*, 772 F. Supp. 2d 457, 463–66 (S.D.N.Y. 2009) (holding that the probate exception did not apply to causes of action for conversion and unjust enrichment because the claims sought to recover assets, allegedly, in the possession of others); *Popple v. Crouse*, C/A No. 3:06–cv–01567 (VLB), 2007 WL 2071627, at *2 (D. Conn. July 13, 2007) (holding that a claimant's claims for unjust enrichment, breach of fiduciary duty, conversion, and theft were outside the bounds of the probate exception because they sought to recover assets in a defendant's possession). *See also Bartone v. Podbela*, No. 17-cv-03039 (ADA) (GRB), 2018 WL 1033250, at *8 (E.D.N.Y. Feb. 23, 2018) ("[T]he [p]laintiff's claims for an accounting, unjust enrichment and undue influence do not require this [c]ourt to assume *in rem* jurisdiction over any property. The claims for undue influence and unjust enrichment are tort claims that seek damages from the [d]efendant personally. Such claims clearly do not fall within the probate exception." (citations omitted)); *Marcus*, 715 F. Supp. 2d at 534 ("Even assuming, *arguendo*, that the [t]rust was improperly terminated, Plaintiffs, at best, are asking the [c]ourt to return property currently in the [d]efendants' possession to the [t]rust. Requests to return property to an estate or trust, rather than to dispose of property currently part of an estate or trust, do not fall within the probate exception because the *res* at issue is not within the probate court's jurisdiction if it [] was not part of the estate at the time of the decedent's death." (emphasis in

original) (citations omitted)). For similar reasons, Plaintiffs' claims for intentional interference with prospective economic advantage and negligent interference with prospective economic advantage are likewise beyond the focus of the probate exception because they are against Defendants themselves and not from property in the custody of the probate court. *See Wellin v. Wellin*, No. 2:14–cv–4067–DCN, 2015 WL 628071, at *10–11 (D.S.C. Feb. 12, 2015) (holding that neither intentional interference with prospective contractual relations nor negligence *per se* implicated the application of the probate exception because they were *in personam* claims against a defendant herself); *Vito & Nick's, Inc. v. Barraco*, No. 05 C 2764, 2006 WL 2598048, at *2 (N.D. Ill. Sept. 6, 2006) (holding that the tort claims of conversion and negligence did not fall within the bounds of the probate exception). As to the unfair competition claim, this is also a tort law claim grounded in common law, which is an *in personam* claim. *See Bartone*, 2018 WL 1033250, at *8. Accordingly, the second prong of the probate exception has not been met as to any of Plaintiffs' state law claims because none of them implicate a *res* being exercised by a probate court, but are rather against Defendants individually. As such, the court is compelled to deny both Defendants Bauknight and Sojourner's Motions to Dismiss under Federal Rule of Civil Procedure 12(b)(1) as it relates to the application of the probate exception to the court's exercise of subject-matter jurisdiction because neither prong of the exception has been met here.

E. Defendant Sojourner's Request for *Colorado River* Abstention

Defendant Sojourner moves the court to abstain from exercising jurisdiction under *Colorado River*'s abstention doctrine. (ECF No. 85 at 14–18.) Defendant Sojourner asserts that "[t]he parties in the state court action are identical to the parties in this action." (*Id.* at 15.) He further emphasizes that Plaintiffs bring "state [] law specific claims," and "[t]he subject-matter of this action . . . involves property the income from which is currently being administered by the

[e]state in South Carolina." (*Id.* at 15–17.) In opposition to Defendant Sojourner, Plaintiffs argue that these matters are not parallel to the state court proceedings because none of their current legal claims are asserted in the state court litigation. (*See* ECF No. 98 at 27–28.)

Under *Colorado River*'s abstention doctrine, "a federal court may abstain from exercising jurisdiction over a duplicative federal action for purposes of 'wise judicial administration.'" *VonRosenberg v. Lawrence*, 849 F.3d 163, 197 (4th Cir. 2017) (quoting *Colorado River Water Conservation Dist.*, 515 U.S. at 818). "[T]his form of abstention 'is an extraordinary and narrow exception to the duty of a [d]istrict [c]ourt to adjudicate a controversy properly before it' and that '[a]bdication of the obligation to decide cases can be justified under [abstention] only in the exceptional circumstances where the order to the parties to repair to the [s]tate court would clearly serve an important countervailing interest.'" *Chase Brexton Health Servs., Inc. v. Maryland*, 411 F.3d 457, 463 (4th Cir. 2005) (citation omitted). As such, "the task is to ascertain whether there exist 'exceptional' circumstances, the 'clearest of justifications,' that can suffice under *Colorado River* to justify the *surrender* of that jurisdiction." *Moses H. Cone Mem'l Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 25–26 (1983) (emphasis added).

There is a two-part test when determining whether *Colorado River* abstention is appropriate. *See Chase Brexton*, 411 F.3d at 463–64. First, there must be parallel federal and state suits. *See VonRosenburg*, 849 F.3d at 168; *New Beckley Mining Corp. v. Int'l Union, United Mine Workers of Am.*, 946 F.2d 1072, 1073 (4th Cir. 1991). "State and federal suits are parallel only 'if substantially the same parties litigate substantially the same issues in different forums.'" *VonRosenberg*, 849 F.3d at 168 (quoting *New Beckley Mining Corp.*, 946 F.2d at 1073). "It is not enough for parties in the state and federal actions to be merely aligned in interest." *Id.* "[E]ven state and federal claims arising out of the same factual circumstances do not qualify as parallel if

they differ in scope or involve different remedies." *Id.* Secondly, only if parallel actions exist, the court must then balance several factors, and the balance must weigh in favor of abstaining federal jurisdiction for the court to relinquish its jurisdiction. *See Chase Brexton Health Servs., Inc.*, 411 F.3d at 463–64. Those factors include the following:

> (1) whether the subject matter of the litigation involves property where the first court may assume *in rem* jurisdiction to the exclusion of others; (2) whether the federal forum is an inconvenient one; (3) the desirability of avoiding piecemeal litigation; (4) the relevant order in which the courts obtained jurisdiction and the progress achieved in each action; (5) whether state law or federal law provides the rule of decision on the merits; and (6) the adequacy of the state proceeding to protect the parties' rights.

Id. (citing *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 15–16, 19–27). No one factor is dispositive. *Colorado River*, 515 U.S. at 818. The weight of each specific factor varies as it relates to a specific case. *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 17. In *Colorado River*, the Supreme Court approved the dismissal of a case because there was a "clear federal policy . . . [of] avoidance of piecemeal adjudication of water rights in a river system . . . ." 424 U.S. at 819. On the other hand, in *Moses H. Cone*, the Supreme Court disapproved of a district court's stay because there was no danger of piecemeal litigation as it related to enforcing the Federal Arbitration Act, and the case "involve[d] federal issues." 460 U.S. at 19–29.

Applying those deep-rooted, legal principles, *Colorado River* abstention is not appropriate because the state and federal suits are not parallel. Here, Plaintiffs bring a copyright claim and various state law claims. (*See* ECF No. 1.) The ongoing litigation in the state courts is confined to determinations about the spousal status of Defendant Hynie and the administration of probate assets, both of which exclude decisions about statutory termination rights and any of the state law claims within Plaintiffs' Complaint. (*See id.* at 11–12 ¶¶ 41–47; ECF No. 151 at 4.) In other words, there is no indication that Plaintiffs are litigating the "substantially[,] [] same issues" or claims

from the state court litigation in this action because the legal issues in state court exclusively involve Defendant Hynie's marital status to James Brown and the administration of probate assets, neither of which are currently being litigated before this court. (*See* ECF No. 1 at 11–12, 18–31 ¶¶ 41–47, 66–114; ECF No. 151 at 4.) Most importantly, the fact that the claims within Plaintiffs' Complaint are not pending within the state courts of South Carolina prohibit any finding that the instant suit is parallel to the state court proceedings. *See McLaughlin v. United Va. Bank*, 955 F.2d 930, 935 (4th Cir. 1992) (holding that federal and state proceedings were not parallel under *Colorado River* because a breach of contract claim in a federal court "was not pending, nor [was] it ever [] pending, in any state court proceeding"). Also fatal to his request for *Colorado River* abstention, Defendant Sojourner never presents any argument that Plaintiffs "litigate[d] substantially the same issues" in any state court forum and does not even identify whether there are any parallel issues at stake. (*See* ECF No. 85 at 15–16.) Lastly, when the court held oral argument on these matters, Defendants conceded that the state courts have not made any resolutions pertaining to copyrights, let alone any concerning the Copyright Act's termination provisions. (ECF No. 180.) For those reasons alone, Defendant Sojourner has failed to show the parallelism of "same issues" for purposes of *Colorado River* abstention, and therefore his Motion to Dismiss is denied under Federal Rule of Civil Procedure 12(b)(1) and *Colorado River* abstention is not warranted in this case merely because of the existence of common facts with the underlying state court proceedings.[14] *See Al-Abood ex rel. Al-Abood v. El-Shamari*, 217 F.3d 225, 233 (4th

[14] Because Defendant Sojourner has not shown the basic prerequisite of parallelism under *Colorado River* abstention, the court need not make any findings relating to the application of the various factors needed for an abstention determination. *See VonRosenberg*, 849 F.3d at 197 ("Exceptional circumstances allowing for abstention under *Colorado River* do not exist when state and federal cases are not duplicative, but merely raise similar or overlapping issues." (citation omitted)); *Pullman Arms Inc. v. Healey*, 364 F. Supp. 3d 118, 122–23 (D. Mass. 2019) (declining to engage in any further abstention analysis, under *Colorado River*, after determining that a federal

Cir. 2000) ("Although the two proceedings have certain facts and arguments in common, *the legal issues are not substantially the same*." (emphasis added)).

F. Defendant Brown's Invocation of the *Rooker-Feldman* Doctrine and *Younger* Abstention

Defendant Brown, the only party bringing this argument, maintains that the court should abstain from hearing this action under the *Rooker-Feldman* doctrine. (ECF No. 101 at 13–15.) After recounting the paternity proceedings in the South Carolina state courts concerning Defendant Brown's relationship to James Brown, Defendant Brown alleges in a conclusory fashion that "[i]t is obvious [that] Plaintiffs are seeking to re-litigate the issue of [his] paternity . . . to his father." (ECF No. 101 at 14.) According to Defendant Brown, his paternity is central to Plaintiffs' claims, which requires the dismissal of the Complaint. (*Id.* at 15.) Defendant Brown also contends that the court should abstain under *Younger v. Harris*, 401 U.S. 37 (1971). (*Id.*) In opposition, naturally, Plaintiffs argue that the *Rooker-Feldman* doctrine is legally inapplicable to these proceedings. (ECF No. 111 at 15–16.) Plaintiffs have not presented any position regarding the applicability of *Younger* abstention. (*See id.*)

i. The Rooker-Feldman Doctrine

The *Rooker-Feldman* doctrine "applies only when the loser in state court files suit in federal district court seeking redress for an injury allegedly caused by the state court's decision itself." *Davani v. Va. Dep't of Transp.*, 434 F.3d 712, 713 (4th Cir. 2006). "*Rooker-Feldman* does not otherwise override or supplant preclusion doctrine or augment the circumscribed doctrines that allow federal courts to stay or dismiss proceedings in deference to state-court actions." *Exxon*

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and state action were not sufficiently parallel); *Kingland Sys. Corp. v. Colonial Direct Fin. Grp., Inc.*, 188 F. Supp. 2d 1102, 1115 (N.D. Iowa 2002) (holding that two lawsuits were not parallel for the application of *Colorado River* abstention and noting that the court did not need to apply the *Colorado River* factors due to a lack of parallelism).

Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005). Thus, under the *Rooker-Feldman* doctrine, "lower federal courts are precluded from exercising appellate jurisdiction over final state-court judgments." *Lance v. Dennis*, 546 U.S. 459, 463 (2006). The Supreme Court has stressed the "narrowness" of the *Rooker-Feldman* doctrine. *See id.* at 464. This doctrine is narrow because it is "confined to 'cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.'" *See id.* (quoting *Exxon Mobil*, 544 U.S. at 284). Accordingly, the Supreme Court has refused to extend the doctrine "where there is parallel state and federal litigation," emphasizing that it "is not triggered simply by the entry of judgment in state court." *Exxon Mobil Corp.*, 544 U.S. at 292.

Applying those legal principles to the instant case, the Complaint specifically states that Plaintiffs "do not seek to litigate any interest or rulings that are the subject of the South Carolina proceedings, including the [s]pousal [o]rders." (ECF No. 1 at 18 ¶ 65.) Tellingly, Plaintiffs concede that they "in no way seek to re-litigate Hynie's and James II's purported status as Brown's surviving spouse and child, respectively . . . ." (*Id.* at 3 ¶ 10.) Upon the court's careful probing, nowhere within the Complaint is there any request for a review of a state court decision or judgment. (*See id.* at 1–35.) Because there is no state court judgment upon which Plaintiffs seek review, Defendant Brown can hardly maintain that Defendants "seek[] redress for an injury allegedly caused by the state court's decision itself." *Davani*, 434 F.3d at 713. Moreover, Plaintiffs' concessions about the state court determinations in no way "invit[e] district court review and rejection of those [state court] judgments." *Lance*, 456 U.S. at 464. For these reasons, the court denies Defendant Brown's Motion to Dismiss based upon the *Rooker-Feldman* doctrine because Plaintiffs' Complaint does not seek review of any state court decision or determination. *See Silva*

v. Cty. of L.A., 215 F. Supp. 2d 1079, 1084 (C.D. Cal. 2002) ("Because Silva's complaint does not seek review of a specific state court decision, it will not be dismissed under *Rooker-Feldman*.").

ii. Younger Abstention's Applicability

In addition to his legally flawed argument concerning the *Rooker-Feldman* doctrine, Defendant Brown also contends that the court should abstain under *Younger v. Harris*, 401 U.S. 37 (1971). (ECF No. 101 at 15.) The Supreme Court has cautioned federal courts from interfering with ongoing, state criminal proceedings and encourages abstention in those situations. *Younger*, 401 U.S. at 46–50. *See also Harper v. Pub. Serv. Comm'n of W. Va.*, 396 F.3d 348, 3514 (4th Cir. 2005) ("*Younger* abstention originated as a doctrine requiring federal courts not to interfere with ongoing state criminal proceedings." (citation omitted)). But, the principles of *Younger* "are fully applicable to noncriminal judicial proceedings when important state interests are involved." *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982) (citing *Moore v. Sims*, 442 U.S. 415, 423 (1979); *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604–05 (1975)). *Younger* abstention may apply in a noncriminal proceeding when the following three elements are met: (1) "there are ongoing state judicial proceedings"; (2) "the proceedings implicate important state interests"; and (3) "there is an adequate opportunity to raise federal claims in the state proceedings." *Martin Marietta Corp. v. Md. Comm'n on Human Relations*, 38 F.3d 1392, 1398 (4th Cir. 1994) (citing *Middlesex Cty.*, 457 U.S. at 432). Important state interests may include, but are not limited to, business and corporate regimes, education, family relations, property law, and regulatory matters implicating the public health. *See Harper*, 396 F.3d at 352–53 (collecting cases). However, "[a]bstention is not necessarily appropriate in every civil action that meets the formal requirements of *Younger* doctrine." *Richmond, Fredericksburg & Potomac*, 4 F.3d at 251 (citations omitted).

Similar to his flawed argument concerning the *Rooker-Feldman* doctrine, Defendant Brown's invocation of *Younger* abstention is equally meritless. *See supra* Part III.F.i. First, there is currently ongoing state appellate and probate proceedings concerning state law matters in this case, which would satisfy the first prong for *Younger* abstention in this context. *See supra* Part I.A. However, there is no indication that the proceedings before this court, which involve statutory termination rights, "implicate important state interests" because Plaintiffs' first federal claim does not fall within the purview of the usual "important state interests," including corporate regimes, education, family relations, or property law. (*See* ECF No. 1 at 1–35.) Termination rights, which the federal claim centers itself upon, are statutory rights created by Congress, and Congress developed its own statutory scheme, separate and apart from state laws, to delineate how they pass to an author's heirs. *See* 17 U.S.C. §§ 203(a), 304(c). Indeed, there can be no "important state interests" relating to termination rights or whether there is "an agreement to the contrary" limiting termination rights, as state courts are precluded from adjudicating these novel provisions within the Copyright Act. *See* 28 U.S.C. § 1338(a) ("No [s]tate court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to . . . copyrights."). As such, the proceedings here do not implicate any "important state interests." *Martin Marietta Corp.*, 38 F.3d at 1398. Moreover, there is not "an adequate opportunity to raise [these] federal claims in the state proceedings" because the Complaint does not relate to copyright ownership or intestate succession, both of which are matters guided by state law (ECF No. 1 at 1–35). *See* 17 U.S.C. § 201(d)(1) ("The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession."). Instead, the delineation of statutory termination rights and whether there is an "agreement to the contrary" are exclusively governed by the provisions of

the Copyright Act, and a state court is generally precluded from resolving such claims. *See* 17 U.S.C. §§ 203(a), 304(c); 28 U.S.C. § 1338(a). Thus, Plaintiffs would simply be unable to raise these "federal claims in the state proceedings." *See* 28 U.S.C. § 1338(a). As such, Defendant Brown's request for the court to apply *Younger* abstention is denied because there is neither an "important state interest," and Plaintiffs could not vindicate their federal claim in state court.

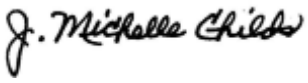
For those reasons, Defendant Brown's invocation of the *Rooker-Feldman* doctrine and *Younger* is profoundly misplaced and without legal merit as it concerns Plaintiffs' Complaint. Thus, the court denies Defendant Brown's Motion to Dismiss, under Federal Rule of Civil Procedure 12(b)(1), as it concerns both the *Rooker-Feldman* doctrine and *Younger* abstention.

IV. CONCLUSION

The court recognizes the novelty of Defendants' challenge to the court's subject-matter jurisdiction under the Copyright Act, but federal courts, in most instances, have "a strict duty to exercise the jurisdiction that is conferred upon them by Congress." *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716 (1996) (citation omitted). After careful consideration of Defendants' Motions, Plaintiffs' Responses in Opposition, and the parties' arguments at the hearing, the court **DENIES IN PART** Defendants Bauknight, Hynie, and Brown's Motions to Dismiss (ECF Nos. 80, 81, 101) under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(2). More specifically, the court **DENIES** all of Defendants Bauknight, Hynie, and Brown's challenges to the court's exercise of subject-matter jurisdiction and personal jurisdiction. As such, the court also **DENIES** the Motions based upon the application of the probate exception, the *Rooker-Feldman* doctrine, and *Younger* abstention. In addition, the court **DENIES** the entirety of Defendant Sojourner's Motion to Dismiss (ECF No. 85), which includes the invocation of the *Colorado River* abstention, the application of the probate exception, and the challenges to the court's exercise of subject-matter

jurisdiction.

IT IS SO ORDERED.



United States District Judge

August 21, 2019
Columbia, South Carolina